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In The

Supreme Court of the United States

October Term, 1981

INWOOD LABORATORIES, INC., et al.,
Petitioners,

vs.

IVES LABORATORIES, INC.,
Respondent.

DARBY DRUG CO., INC., et al.,
Petitioners,

vs.

IVES LABORATORIES, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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Petition for *Certiorari* Filed June 24, 1981
***Certiorari* Granted October 13, 1981**

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26*	One Individually Wrapped 400 mg. Capsule Labeled in Part "CYCLANDELATE 400 mg. CYCLOSPASMOL — CALVINSG⁹" (Photograph Copy)	576a
27*	One Individually Wrapped 400 mg. Capsule Labeled in Part "CYCLOSPASMOL (G) 400 mg." from Calvin's Drug Store (Photograph Copy)	576a
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PLAINTIFF'S EXHIBIT 74 — A STUDY OF RECOGNITION AND CONFUSION OF DRUGS BY PRESCRIBERS AND USERS (JANUARY 1980)

A STUDY OF

RECOGNITION AND CONFUSION

OF DRUGS BY

PRESCRIBERS AND USERS

HHR

HARRY HELLER RESEARCH CORP.

* * *

Prepared for:

IVES LABORATORIES

By:

HARRY HELLER RESEARCH CORP.

HHR #X9624

January, 1980

BACKGROUND

It has been proposed that aside from the brand name, one of the major ways in which physicians and patients identify prescription drugs is by the color of the capsule.

Plaintiff's Exhibit 74

To quantify this hypothesis, this study was conducted among physicians who had prescribed and patients who had used Cyclospasmol recently and in the past. The goal of this study was to measure the extent to which both physicians and patients depend upon the color of Cyclospasmol in identifying it in a real life situation.

With hundreds of drugs heavily prescribed and used, the odds of identifying a specific drug as Cyclospasmol by chance is extremely small — unless the color of the capsule is the mode of identification.

SUMMARY

Among the physicians who prescribed Cyclospasmol 200 mg. dosage, 43% misidentified the generic blue capsules as Cyclospasmol. The bulk of them (28%) misidentified them spontaneously, while the remainder (15%) mididentified [sic] the blue capsules after seeing a list of ten drugs and associating the blue capsules with Cyclospasmol.

— The level of misidentification of the blue capsules as Cyclospasmol by physicians increases with the recency of Cyclospasmol having been prescribed by them. Among those physicians who prescribed Cyclospasmol within the past month, 60% misidentified the generic blue capsules as Cyclospasmol.

Plaintiff's Exhibit 74

	Physicians Who Prescribe 200 mg.				
	Total	Less Than One Month Ago	Less Than Six Months Ago	More Than One Month Ago	More Than Six Months Ago
Total Misidentification	43%	60%	49%	22%	20%
Spontaneously misidentified Blue/capsules as Cyclospasmol	28	40	33	13	10
Misidentification of Blue capsules as Cyclospasmol after seeing list of 10 drug brands on card	15	20	16	9	10
Did not identify Blue capsules as Cyclospasmol	57	40	51	78	80
Sample Size	(53)	(30)	(43)	(23)	(10)

Of those who prescribed the 400 mg. dose of Cyclospasmol, 20% misidentified the generic blue/red capsules as Cyclospasmol.

Plaintiff's Exhibit 74

— Again, the level of misidentification of the blue/red capsules as Cyclospasmol increased among physicians who prescribed the drug within the past month (31% misidentified the generic blue/red capsules as Cyclospasmol.

	Physicians Who Prescribed 400 mg.				
	Total	Less Than One Month Ago	Less Than Six Months Ago	More Than One Month Ago	More Than Six Months Ago
Total Misidentification	20%	31%	24%	5%	-%
Spontaneously misidentified Blue-Red capsules as Cyclospasmol	12	21	14	-	-
Misidentification of Blue/Red capsules as Cyclospasmol after seeing list of 10 drug brands on card	8	10	10	5	-
Did not identify Blue/Red capsules as Cyclospasmol	80	69	76	95	100
Sample Size	(50)	(29)	(42)	(21)	(8)

Plaintiff's Exhibit 74

Among patients for whom the 200 mg. dose of Cyclospasmol was prescribed, 67% misidentified the generic blue capsules as Cyclospasmol with 50% of all patients spontaneously misidentifying the blue capsules as Cyclospasmol.

— Since it was found that not all the patients were aware of name of the drug prescribed by their doctor (Cyclospasmol), the group of patients who were aware of the name Cyclospasmol were analyzed separately. Among patients aware of the name Cyclospasmol, 92% misidentified the generic blue capsules as Cyclospasmol with 69% making a spontaneous misidentification.

Among patients for whom Cyclospasmol was prescribed in the 400 mg. dosage, 67% misidentified the generic blue/red capsules as Cyclospasmol.

— Again, among patients who were aware of the name Cyclospasmol, 100% misidentified the blue/red capsules as Cyclospasmol.

Plaintiff's Exhibit 74

	Patients					
	Had 200 mg.		Prescribed	Had 400 mg.		Prescribed
	Total	Know Cyclospasmol Prescribed	Don't know Cyclospasmol Prescribed	Total	Know Cyclospasmol Prescribed	Don't know Cyclospasmol Prescribed
Total Misidentification	67%	92%	-	67%	100%	14%
Spontaneously misidentified Blue or Blue/Red capsules as Cyclospasmol	50	69	-	17	27	-
Misidentification of Blue or Blue/Red capsules as Cyclospasmol after seeing list of ten drug brands on card	17	23	-	50	73	14
Did not identify Blue or Blue/Red capsules as Cyclospasmol	33	8	100	33	-	86
Sample size	(18)	(13)	(5)	(18)	(11)	(7)

Plaintiff's Exhibit 74

When physicians and patients were asked their criteria for identification of a drug, the dominant determining factor for both groups was the color of the capsules.

— Among physicians, 52% said color was the determining factor.

— Among patients, 79% said they used color to make their identification.

(See Tables 1 and 10)

Sampling Errors at the 80% Significance Level for Various Sample Sizes and Percentage

	Sample Sizes					
Percentages*	10	20	30	50	75	100
10% or 90%	12%	9%	7%	5%	4%	4%
20% or 80%	16	11	9	7	6	5
30% or 70%	18	13	11	8	7	6
40% or 60%	20	14	11	9	7	6
50%	20	14	12	9	7	6

* These estimates of sampling error imply that if the sample were re-drawn repeatedly and independent estimates derived, that 80% of the time the observed percentages would fall within the sampling errors given in the table above.

Plaintiff's Exhibit 74

APPENDICES

Appendix A — Tables for Physicians

Appendix B — Tables for Patients

Appendix C — Method

APPENDIX A

TABLES FOR PHYSICIANS

Table 1

Method by Which Drugs Were Identified

	Total
Color	52%
Prescribe them/take myself	38
Capsule has name on it	32
Seen it before	20
Granules/spanules	15
Size	12
Have seen samples	11

Plaintiff's Exhibit 74

I take them myself	10
Shape	8
Manufacturer's Trademark	7
Other reasons	6
Base: Physicians who recognized at least one capsule	(82)

Table 2

Spontaneous Recognition of Any of the Four Colored Capsules

	Total
Yes	85%
No	15
Base: Total	(96)

Table 3

Spontaneous Recognition by Color

	Total
Recognize all blue	35%
Recognize blue/red	21

Plaintiff's Exhibit 74

Recognize brown/white	89
Recognize maroon/white	92
Base: Physicians who recognized at least one capsule	(82)

Table 4

Correct Spontaneous Recognition by Color Based Upon Claimed Recognition

	Total	Base
All blue (misidentified as Cyclospasmol)	59%	(29)
Blue/Red (misidentified as Cyclospasmol)	47	(17)
Brown/White (identified as Pavabid)	95	(73)
Maroon/White (identified as Dyazide)	88	(75)

Plaintiff's Exhibit 74

Table 5

Ever Prescribed Cyclospasmol

	Total
Yes	93%
No	7
Base: Total	(96)

Table 6

Last Time Cyclospasmol Prescribed

	Total
Less than one month ago	52%
1 - 3 months ago	17
Between 3 and 6 months ago	9
More than 6 months ago	22
Base: Total	(89)

Plaintiff's Exhibit 74

Table 7

Dosage of Cyclospasmol Prescribed

	Total
200 Milligrams	40%
400 Milligrams	37
Both	20
Base: Total	(89)

Table 8

Medical Specialty of Physician

	Total
General family practitioner	53%
Internist	25
Podiatry	8
Surgeon	4
Diagnostician	2
Ear, nose, & Throat	1
Rheumatologist	1

Plaintiff's Exhibit 74

Physician (D.O.)	1
Gynocologist	1
Pulmonary medicine	1
Geriatrics	1
E.G.	1
Base: Total	(96)

Table 9

Percent of Patients Over 65 Years of Age

	Total
Less than 20% over 65	14%
20% - 39%	47
40% - 59%	19
60% - 79%	15
80% Or More	5
Base: Total	(96)

Plaintiff's Exhibit 74

APPENDIX B

TABLES FOR PATIENTS

Table 10

Method by Which Drugs Were Identified

	Total
Color	79%
Size	25
Looks like one I take	14
Shape	11
Has word written on it	7
Looks like one I used to take	4
Base: Patients who recognized at least one capsule	(28)

Plaintiff's Exhibit 74

Table 11

Aware That Cyclospasmol is Prescribed for Them

	Total
Aware of Cyclospasmol	67%
Unaware of Cyclospasmol	33
Base: Total	(36)

Table 12

Length of Time Taking Cyclospasmol

	Total
One month or less	11%
Two - six months	28
Nine months - year	11
More than one year	31
No longer taking	8
Not sure	11
Base: Total	(36)

Plaintiff's Exhibit 74

Table 13

Number of Capsules Taken Per Day

	Total
One	14%
Two	36
Three	8
Four	22
Not sure	20
Base: Total	(36)

DESCRIPTION OF DRUG POSSESSED BY PATIENTS

Table 14

Is Name Printed on Capsule?

	Total
Name is Printed On Capsule	58%
Ives	50
Upjohn	3
Premo	3
NC	3

Plaintiff's Exhibit 74

Name is Not Printed on Capsule	14
No Capsules Left to Examine	28
Base: Total	(36)

Table 15

Is Number Printed on Capsule?

	Total
Yes	53%
No	19
No capsules left to examine	28
Base: Total	(36)

Table 16

Color of Capsule

	Total
Blue/red	39%
Blue	25
Clear and Black	6
Red	3

Plaintiff's Exhibit 74

Maroon and red	3
No capsule left to examine	28
Base: Total	(36)

Table 17

Do All Capsules Have Same Markings?

	Total
Yes	67%
No	5
No capsules left to examine	28
Base: Total	(36)

Table 18

Age of Patients

	Total
20 - 49	6%
50 - 59	14
60 - 69	33
70 or older	47
Base: Total	(36)

Plaintiff's Exhibit 74

METHOD

The original design of the study was to interview approximately 100 physicians who had prescribed Cyclospasmol for their patients and obtain the names of 100 patients who had used Cyclospasmol as a result of the doctor's prescription. The interview was structured to provide both physicians and patients with a variety of drug products and to determine the extent to which they identify a blue or blue/red capsule as Cyclospasmol. This information was obtained in two ways — spontaneously and by association with a list of 10 drug products.

In this study, products were used that looked like the 200 mg and 400 mg forms of Cyclospasmol to determine recognition and confusion.

The Sample

In designing the sample for this study, a variety of controls were exercised.

1. All physicians chosen in the study must have had some experience in the past with Cyclospasmol.

2. The sample of physicians selected must be representative of the total population of physicians who could prescribe Cyclospasmol.

3. Several attempts must be made to contact the specific physician selected in order to represent the sample properly.

Plaintiff's Exhibit 74

Only by following these three rules would the final sample of approximately 100 physicians be representative of the total population of Cyclospasmol prescribers in the U.S.

A. The Sampling Frame

The "frame" from which the sample was selected consisted of a list of approximately 12,000 physicians ordered by Zip Code. These were identified by Ives detail persons as having prescribed Cyclospasmol for their patients. The exact nature of their prior behavior was not pre-determined. While the exact history of each physician on the list in prescribing Cyclospasmol was not known, this group of physicians was the best representation of doctors who was believed to have prescribed Cyclospasmol.

During the course of the study a specific question was asked to determine the extent to which the sample had prescribed Cyclospasmol.

B. Selection of the Sample from Within the Frame

Before the sample was selected, several considerations were made which affected the way in which the sample was selected.

1. It was decided that the sample would be selected from among 20 sampling points spread throughout the U.S. This was done to provide for five interviews within each sampling point and to represent a wide variety of geographical locations in the sample of physicians and to insure that the selection of each physician would not be left to the discretion of the interviewer.

Plaintiff's Exhibit 74

2. The specific areas used for the study were chosen randomly. When an area was chosen that did not have an adequate number of prescribing physicians available, an immediately adjacent area was selected.

   Pre-testing had demonstrated the exceedingly great difficulty in executing the study. It was clear that the very best trained interviewers were required for sound execution of the project. In 1 or 2 cases where an initially selected area did not have such qualified interviewers, an immediately adjacent area was selected. The areas used in the survey are listed on the next page.

AREAS USED

Portland, ME

New York City, NY

Syracuse, NY

Pittsburgh, PA

Washington DC Area

Charlotte, NC

Atlanta, GA

Miami Area

Memphis, TN

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Louisville, KY

Dayton, OH

Omaha, NE

Peoria, IL

Kansas City, MO

New Orleans, LA

Dallas, TX

San Antonio, TX

Los Angeles Area

San Francisco, CA

Seattle, WA

3. Once the specific area was selected, the names of physicians within that area were listed and sent with the interviewing materials to the interviewers. Interviewers were instructed to make several attempts to make appointments with the physicians on the list until the assigned interviews were completed within reasonable distance and travelling time.

C. Random Method of Selecting Interviewing Areas

To select the sample, a random number was selected from a table of random numbers by Dr. Benjamin Lipstein. This

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number identified the first physician and area which was selected. Based upon the total length of the list, a skip pattern of 602 names was specified (602 X 20 - 12,040). This procedure yielded 20 geographical areas each described by a cluster of physicians. Each of the 20 areas was examined to determine if enough physicians were available. Then if skilled interviewers were available in the area it was chosen. The nature of this random selection resulted in a geographical stratification by zip codes which increases the statistical reliability of the results.

Since interviewing was conducted during the month of December 1979, several areas were selected for which interviewers were available, but unable to take the assignment due to other market research work done during this time period and a shortage of demonstration materials. These areas are being completed during the month of January. Their results will be combined with these.

D. The Interview

1. Physicians

As a starting point, interviewers telephoned a randomly selected physician on the list in the cluster and made an appointment with the physician for an office visit. This initial call introduced the research in a non-specific manner and offered the physician payment of his normal fee for the office visit. Several telephone calls were made to properly represent the physicians to be selected in the sample. Specific instructions were given the interviewer to respond in a general way to answer any questions that the physician may have brought up in the course of setting the appointment.

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In the event that a physician refused to cooperate on the survey, the interviewer was instructed to choose the next name on the list. If all physicians in the area were exhausted, a neighboring area and group of physicians were selected.

During the appointment, the interviewer re-introduced him or herself and asked the doctor:

a. His medical specialty
b. The percentage of his patients over 65 years of age

Physicians were told that they would be talking about medication that can be prescribed for some elderly people. Four different capsules were spread on the desk between the interviewer and the physician. The doctors were asked whether they recognized any of the capsules and if so, to separate and identify the capsules that they are familiar with.

Included in the group of capsules were three blue capsules the color of Cyclospasmol 200 mg. (2 unmarked and 1 marked Premo), three blue and red the color of Cyclospasmol 400 mg. (2 unmarked and 1 marked Premo), three brown and white capsules the color of Pavabid (one marked Pavabid, one marked centrol and one unmarked), and three maroon and white capsules the color of Diazide (all 3 marked Diazide). Physicians were asked how they recognized the capsules they separated and to name each of the products that they had separated.

In the event that the physician was not able to spontaneously associate the capsules by color to Cyclospasmol in either the 200 mg. or 400 mg. form,

the physician was given a card with a list of 10 drug products on it. The list consisted of Cyclospasmol, Pavabid and Diazide and 7 other drugs selected at random from a list of the 200 largest selling drugs. (The list on the cards was rotated so that each drug appeared in each position an equal number of times). The physician was shown the card and asked whether they can now associate any of the capsules, and if so, to identify the capsule or capsules he could identify.

After this phase of the interview, the doctor was asked whether he had ever prescribed Cyclospasmol, when was the last time he had prescribed Cyclospasmol, and what dosage of Cyclospasmol he had prescribed in the past.

In order to obtain patients for the second phase of the study, the physicians were asked to supply the interviewer with the names and addresses of any patients for whom the doctor had prescribed Cyclospasmol and the dosage in which it was prescribed. The physician was reassured that the purpose of this survey was to learn how patients recognize certain capsules and nothing to do with professional treatment in the prescription. He was also asked not to communicate to the patient anything about the study. He was told that the patient would be paid a fee for the interview and he or his nurse was offered a reimbursement for supplying the names of the patients who were willing to cooperate.

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2. The Patient Interview

To start, the interviewer introduced herself to the patient and offered the patient a $10.00 fee for the interview. The first question asked the patient was whether his doctor had called about the interview and what the doctor or nurse said about the interview. Two sets of 3 prescription bottles each were available in the interview and depending upon whether the patient was a 200 mg. or 400 mg. user of Cyclospasmol, a set was selected for that respondent. In each set of 200 mg. products, one bottle was labelled Cyclandelate Inwood, one Cyclandelate Premo, and one Cyclandelate MD. One bottle in each set of 400 mg. was labelled Cyclandelate Inwood, one Cyclandelate Premo, and one Cyclandelate Rugby.

Capsules in the Premo bottles were imprinted with the name "Premo". All of the others were unmarked. The 3 prescription bottles were placed on the table in front of the respondent. Each of these bottles had a different closure system and the patient was asked to open the bottles and place the cap next to the bottle.

After the bottle was opened, the patient was asked whether he or she recognized the capsules in each of these bottles, and if so, how were they recognized, and what the name of the medication was. In the event that the patient did not spontaneously associate the color of the capsule with the Cyclospasmol dosage he or she was taking, a card listing 10 drugs was presented to the patient and the patient asked whether any of the capsules in the bottles were any of the drugs on the list.

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This list contained Cyclospasmol and 9 randomly selected drugs from a list of the 200 leading drugs. Then the patient was asked whether the doctor had ever prescribed Cyclospasmol or whether the doctor had prescribed a medication that looks like that.

Next, the interviewer asked the patient to see the actual medication the doctor had prescribed for him or her that looks like the medication in the bottles shown to the patient. Where the interview determined that the prescription was marked Cyclospasmol and did not actually contain capsules on which Ives appeared, the interviewer was asked to contact our office through her immediate supervisor. All information about their specific used of Cyclospasmol was obtained including background information, how long the medication has been taken, how many capsules were taken daily and the age of the patient.

VALIDATION

In order to determine that the interviews were administered according to the specifications of the study, an independent company validated, for each interviewer who worked on the project, one physician questionnaire and one patient questionnaire.

Validation consisted of calling the interviewees and determining that the key sections of the interview were administered correctly and in the proper sequence.

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Non-used Interviews

As part of Heller Research's internal validation of questionnaires, it was found that six patient interviews were administered improperly; that is, all questions were not asked that should have been asked. The data from these questionnaires were eliminated from the analysis. This is standard procedure in market research studies.

PLAINTIFF'S EXHIBIT 75 — UPDATE AND SUMMARY ANALYSIS OF EXHIBIT 74

SUMMARY

Among the physicians who prescribed Cyclospasmol 200 mg. dosage, 40% misidentified the generic blue capsules as Cyclospasmol. The bulk of them (24%) misidentified them spontaneously, while the remainder (16%) misidentified the blue capsules after seeing a list of ten drugs and associating the blue capsules with Cyclospasmol.

— The level of misidentification of the blue capsules as Cyclospasmol by physicians increases with the recency of Cyclospasmol having been prescribed by them. Among those physicians who prescribed Cyclospasmol within the past month, 55% misidentified the generic blue capsules as Cyclospasmol.

Plaintiff's Exhibit 75

	Physicians Who Prescribe 200 mg.				
	Total	Less Than One Month Ago	Less Than Six Months Ago	More Than One Month Ago	More Than Six Months Ago
Total Misidentification	40%	55%	46%	21%	15%
Spontaneously misidentified Blue/capsules as Cyclospasmol	24	34	28	10	8
Misidentification of Blue capsules as Cyclospasmol after seeing list of 10 drug brands on card	16	21	18	10	8
Did not identify Blue capsules as Cyclospasmol	60	45	54	79	85
Sample Size	(67)	(38)	(54)	(29)	(13)

Plaintiff's Exhibit 75

Of those who prescribed the 400 mg. dose of Cyclospasmol, 23% misidentified the generic blue/red capsules as Cyclospasmol.

— Again, the level of misidentification of the blue/red capsules as Cyclospasmol increased among physicians who prescribed the drug within the past month (31% misidentified the generic blue/red capsules as Cyclospasmol.

	Physicians Who Prescribed 400 mg.				
	Total	Less Than One Month Ago	Less Than Six Months Ago	More Than One Month Ago	More Than Six Months Ago
Total Misidentification	23%	31%	25%	12%	10%
Spontaneously misidentified Blue-Red capsules as Cyclospasmol	11	20	14	-	-
Misidentification of Blue/Red capsules as Cyclospasmol after seeing list of 10 drug brands on card	11	11	12	12	10
Did not identify Blue/Red capsules as Cyclospasmol	77	69	75	88	90
Sample Size	(61)	(35)	(51)	(26)	(10)

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Among patients for whom the 200 mg. dose of Cyclospasmol was prescribed, 67% misidentified the generic blue capsules as Cyclospasmol with 52% of all patients spontaneously misidentifying the blue capsules as Cyclospasmol.

— Since it was found that not all the patients were aware of name of the drug prescribed by their doctor (Cyclospasmol), the group of patients who were aware of the name Cyclospasmol were analyzed separately. Among patients aware of the name Cyclospasmol, 93% misidentified the generic blue capsules as Cyclospasmol with 73% making a spontaneous misidentification.

Among patients for whom Cyclospasmol was prescribed in the 400 mg. dosage, 73% misidentified the generic blue/red capsules as Cyclospasmol.

— Again, among patients who were aware of the name Cyclospasmol, 100% misidentified the blue/red capsules as Cyclospasmol.

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	Patients					
	—Had 200 mg. Prescribed—			—Had 400 mg. Prescribed—		
	Total	Know Cyclo-Spasmol Pre-cribed	Don't know Cyclo-spasmol Pre-cribed	Total	Know Cyclo-spasmol Pre-cribed	Don't know Cyclo-spasmol Pre-scribed
Total Misidentification	67%	93%	-	73%	100%	14%
Spontaneously misidentified Blue or Blue/Red capsules as Cyclospasmol	52	73	-	27	40	-
Misidentification of Blue or Blue/Red capsules as Cyclospasmol after seeing list of ten drug brands on card	14	20	-	45	60	14
Did not identify Blue or Blue/Red capsules as Cyclospasmol	33	7	100	27	-	86
Sample size	(21)	(15)	(6)	(22)	(15)	(7)

PLAINTIFF'S EXHIBIT 79 — REPLICATION SAMPLE OF PATIENTS (SUPPLEMENTAL ANALYSIS)

REPLICATION SAMPLE OF PATIENTS

A separate sample of 28 patients recruited by random dialings to doctors to obtain names of patients to whom Cyclospasmol was prescribed was obtained.

Among patients for whom the 200 mg. dose of Cyclospasmol was prescribed (small base) 50% spontaneously misidentified the generic blue capsules as Cyclospasmol.

Among patients for whom Cyclospasmol was prescribed in the 400 mg. dosage, 75% misidentified the generic blue/red capsules as Cyclospasmol.

— Among patients who were aware of the name Cyclospasmol, 93% misidentified the generic blue/red capsules as Cyclospasmol with 60% of those patients making a spontaneous misidentification.

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Replication Sample of Patients

	Patients					
		Had 200 mg. Prescribed		Had 400 mg. Prescribed		
	Total	Know Cyclospasmol Prescribed	Don't know Cyclospasmol Prescribed	Total	Know Cyclospasmol Prescribed	Don't know Cyclospasmol Prescribed
Total Misidentification	50%	-%	50%	75%	93%	44%
Spontaneously misidentified Blue or Blue/Red capsules as Cyclospasmol	50	-	50	46	60	22
Misidentification of Blue or Blue/Red capsules as Cyclospasmol after seeing list of ten drug brands on card	-	-	-	29	33	22
Did not identify Blue or Blue/Red capsules as Cyclospasmol	50	-	50	25	7	56
Sample size	(4)	(0)	(4)	(24)	(15)	(9)

PLAINTIFF'S EXHIBIT 83 — A STUDY OF PRESCRIPTION FILLING AND LABELING BY PHARMACISTS IN NEW YORK STATE

A Study of

Prescription Filling and Labelling

by Pharmacists

in New York State

Prepared for:

Ives Laboratories

by

Benjamin Lipstein, Ph.D.

BACKGROUND

Cyclospasmol is a branded vasodilator drug distributed by Ives Laboratories. A generic form of this drug called Cyclandelate has been manufactured and distributed by a number of drug companies.

It is the belief of the Ives management that prescriptions written by physicians for Cyclospasmol are on occasion filled properly

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by pharmacists with the generic drug, but that the generic is labeled as Cyclospasmol.

The purpose of this study was to determine if pharmacists in New York State fill prescriptions for Cyclospasmol with the generic drug, but conceal this practice from the purchaser (patient) through labeling of the drug container with the brand name Cyclospasmol.

FINDINGS

Randomly selected samples of pharmacists from both the Ives list of pharmacists believed to carry Cyclospasmol and the generic Cyclandelate and randomly selected pharmacists from the *Hayes Directory* were given a prescription for 200 mg. or 400 mg. of Cyclospasmol by the shopper and asked to fill the prescription. The prescription did not require that the brand name must only be dispensed. The pharmacists filled these prescriptions in their normal way.

Of the 42 pharmacists from the Ives list who were able to fill the prescription, 57% (24 pharmacists) executed it with the branded product, Cyclospasmol. Cyclandelate was used to fill the Cyclospasmol prescriptions by 18 pharmacists (43%). In twelve of the eighteen cases the prescription container was labeled with the name Cyclandelate and in the other 6 cases the prescription bottle was labeled with the brand name Cyclospasmol. Thus, of the 18 pharmacists who dispensed generic Cyclandelate, 33% labeled the prescription container with the brand name Cyclospasmol.

The results of the prescription fulfillment among the sample of pharmacists from the *Hayes Directory* were substantially the

same as from the Ives list. Of the 41 pharmacists, who filled the prescription, 58% (24 pharmacists) used the branded product Cyclospasmol and labeled it as Cyclospasmol. Forty-two percent of the pharmacists (17 pharmacists) used the generic Cyclandelate in fulfilling the prescription. Of the 17 pharmacists, 13 pharmacists labeled it with the generic name Cyclandelate and the other 4 pharmacists labeled it with the brand name Cyclospasmol. Thus, of the 17 pharmacists who dispensed generic Cyclandelate, 24% labeled the prescription container with the brand name Cyclospasmol.

Since the two samples of pharmacists were selected from two different lists, one from a group of pharmacists identified by the Ives sales force as carrying both the branded product Cyclospasmol and generic Cyclandelate and the other form the list of drug stores in the *Hayes Directory* with no information on whether or not they carried Cyclospasmol and generic Cyclandelate, the question arises, "Are the two sets of results statistically equivalent?" and "Should both sample results be combined for an overall view of prescription fulfillment in New York State?".

Statistical analysis of these two independent samples shows that all the percentages for the equivalent estimates are not statistically different. Namely, the 57% estimate of prescription fulfillment with Cyclospasmol is not statistically different from the equivalent estimate of 58% estimated from the *Hayes Directory* sample. The same is true for the 43% and the 42% estimates for fulfillment with Cyclandelate.

On the basis of this statistical analysis it is sound and proper to combine both sample results. This provides a sample base of 83 pharmacists, 58% (48 pharmacists) who filled the prescriptions

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with the branded product Cyclospasmol, and 42% (35 pharmacists) who filled the prescription with Cyclandelate. Twenty-nine percent (10 pharmacists) of the prescription containers filled with Cyclandelate were labeled Cyclospasmol.

Ives List of Pharmacies

Prescription Fulfillment by Pharmacists

	Number	Percent
Cyclospasmol dispensed	24	57
Cyclandelate dispensed	18	43
Total	42	100

Prescription Labeling

When Cyclandelate Dispensed By Pharmacists

	Number	Percent
Cyclandelate dispensed and labeled Cyclandelate	12	67
Cyclandelate dispensed and labeled as Cyclospasmol	6	33
Total	18	100

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Hayes Directory List of Pharmacies

Prescription Fulfillment by Pharmacies

	Number	Percent
Cyclospasmol dispensed	24	58
Cyclandelate dispensed	17	42
Total	41	100

Prescription Labeling

When Cyclandelate Dispensed By Pharmacists

	Number	Percent
Cyclandelate dispensed and labeled Cyclandelate	13	76
Cyclandelate dispensed and labeled as Cyclospasmol	4	33
Total	17	100

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Total Combined Sample of Pharmacies

Prescription Fulfillment by Pharmacists

	Number	Percent
Cyclospasmol dispensed	48	58
Cyclandelate dispensed	35	42
Total	83	100

Prescription Labeling

When Cyclandelate Dispensed By Pharmacists

	Number	Percent
Cyclandelate dispensed and labeled Cyclandelate	25	71
Cyclandelate dispensed and labeled as Cyclospasmol	10	29
Total	35	100

METHODOLOGY

Since pharmacists are licensed by individual states, it was decided to investigate this issue of prescription fulfillment within the bounds of New York State. From sales and field experience, the Ives sales force had observed that some pharmacies in the

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state apparently carried the generic product Cyclandelate as well as the branded product Cyclospasmol. Based upon this information, the sales force was requested to provide a list of pharmacies in New York State which carried both Cyclospasmol and the generic product Cyclandelate. This list of pharmacies consisted of four hundred thirty two pharmacies, identified by name, address and zip code.

The pharmacies identified as carriers of both products were entered on to a computer which provided a listing of the pharmacies by zip code. Using a random start, groups of four pharmacies were selected from the list on a systematic basis. This sampling provided a random sample of fifty-two pharmacies from the list of pharmacies known to carry both the branded product and its generic form.

However, based upon *Hayes Druggist Directory,* 1979 edition, there were approximately three thousand druggists in the state of New York. No information was available on whether or not they carried either Cyclospasmol or the generic equivalent Cyclandelate. In order to arrive at an objective determination of prescription fulfillment, it was decided to select an independent sample of pharmacies from the directory. The New York State part of the directory is to be found on pages 382 to 434 inclusive. Since the druggists in the *Hayes Directory* are grouped by minor civil divisions, the slection [sic] of the sample of druggist by page would automatically provide excellent geographic distribution throughout the state. For each page of the directory related to New York State, a two digit random number was selected. Starting at the top of each page, the druggists where [sic] counted until the random number was reached. This determined the sample druggist for further study.

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Prescriptions for 200 mg. and 400 mg. of Cyclospasmol were obtained from physicians in the area of the selected pharmacies. Shoppers were engaged to visit each of these pharmacies for the purpose of having the pharmacist fill the specific prescription. In total, 83 pharmacies filled the prescription, 42 from the Ives list and 41 from the *Hayes Directory*. Twenty-three stores were either out of stock or did not stock the particular drug, were out of business or were not a retail pharmacy. These fulfilled prescriptions were then sealed by the investigator, placed in a special envelope with information on the name of the pharmacy, its address and the amount paid for the prescription and sealed. These sealed envelopes were delivered in person to Dr. Benjamin Lipstein and/or to Rogers, Hoge & Hills which firm then redelivered them unopened to Dr. Lipstein. Dr. Lipstein personally opened each envelope and prescription bottle and made the calculations contained in this report.

PLAINTIFF'S EXHIBIT 123 — REMARKS OF DR. EDWARD STEMPEL, 1960

* * *

SHOULD STATE BOARD IDENTIFICATION EXAMINATIONS BE ELIMINATED?

College requirements have influenced the curriculum content of the secondary school programs that are offered to students who plan to attend college. In like fashion, the contents of state board licensing examinations in pharmacy have influenced the teachings in the pharmaceutical curriculum.

Many a pharmacy educator may have asked the question, "Are we training students to pass licensing examinations or are we providing an education for practicing the profession of pharmacy?" I believe that education for careers in pharmacy is in accord with the modern philosophy of pharmaceutical education. Nevertheless, perhaps some educators harbor the thought that their educational endeavors are sometimes fruitless if the student cannot have a career in retail pharmacy because of his failure to pass the state licensing examination. Therefore, some educators may be influenced to some small extent by the contents of pharmacy licensing examinations. Perhaps this article can motivate some board members to remove from state licensing examinations what many educators consider an annoying and dangerous influence, specifically, the identification examination.

The identification examination is a recognition test. As Gable[1] pointed out at the 1958 District No. 2 meeting, the recognition test attempts to measure the individual's ability to recognize essential characteristics of a product or to identify objects such as botanical specimens. Katz[2] stated that the

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Pennsylvania identification examination is given by means of a matching-type examination whereby the names of the items are provided and must be matched with the appropriate numbered specimens. Vitale[3] said that the New Jersey identification examination requests the candidate to provide the names of the 10 items presented by the examiners; these items consist of 8 capsules or tablets and 2 liquids. The New York identification examination is similar to that of New Jersey; some recent New York identification examinations (1959 and 1960) asked the candidate the names of 6 to 7 capsules or tablets, 2 to 3 official liquids, and one botanical specimen. From letters received from other states in District No. 2, it was learned that Delaware "has no set rule for the examination of specimens, and it is a matter left entirely to the examiner who lately has asked for the identification of 20 specimens," while the District of Columbia, Maryland, Virginia, and West Virginia do not have identification examinations.

Many pharmaceutical dosage forms may vary in certain physical properties, such as color, odor, and taste. Capsules and tablets may, in addition, vary in other physical properties, i.e., have various shapes, may be plain or lettered (with the letters raised or indented), or show a special design[4] in order to convey a characteristic identification. The variety in the physical appearance of many pharmaceutical dosage forms provides for esthetic appeal, psychological satisfaction, and a possible deterrent to the problem of substitution. *Scoville's The Art of Compounding*[4] states that some manufacturers have developed unusual shapes for tablets in order to obtain a distinctive product and to make duplications (and possible substitution) of their tablet more difficult. Lascoff[5] likewise points out that identifying symbols or letters on tablets and capsules is an attempt to curb substitution, which has plagued some manufacturers at one time or another.

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Some pharmacists believe that identification by physical appearance is advantageous in many instances; however, I do not agree.

Older pharmacists have stated that the physical properties of certain pharmaceuticals have provided the pharmacist who has erred in the initial reading of the label of the container with another opportunity to recognize his mistake. However, I believe that careful rechecking of the label of the container would provide the pharmacist with the same opportunity.

An older pharmacist tells the story of a reputable chemical house that made a mistake about thirty years ago in labeling a filled container, and the retail pharmacist using the contents recognized that the contents could not be what the label represented it to be. It is difficult to believe that today, in 1960, reputable manufacturers, with their excellent systems of control procedures, could possibly err in labeling the containers.

An employee indoctrination book issued by the Fidelity Prescription Stores in Cleveland provides as one of their seven "tips and reminders" that the pharmacist verify the physical appearance to see whether the color, odor, shape, or other physical property of the tablet, capsule, or powder is correct.[6] I would like to point out that an individual cannot verify what he has not seen previously; therefore, the Fidelity "tip and reminder" concerning the checking and rechecking of the label of the container, [6] that should always be practiced, is far more valid.

Lascoff's column on "Prescription Problems" states[7] that a pharmacist writes, "To an increasing extent, physicians in our area have been sending us tablets, prescribed for one of their patients by some other physician, for the purpose of

identification. . . . one physician sent us three different tablets. Fortunately, one was readily identified because it was a Smith Kline and French product which we could pin down immediately from the identification chart in their catalogue. . . . Don't you think all manufacturers could render a real service by putting identification charts in their catalogues?" The question in Lascoff's column was answered exceedingly well by a Pennsylvania pharmacist[8] who replied, "One of our primary responsibilities, as pharmacists, is the filing of all prescriptions. This information is then available to any authorized person desiring it. The *only* possible way to definitely establish the identify of a prescribed drug is through the prescription files of the dispensing pharmacist. Any attempt to identify a drug wholly by its physical characteristics, aside from being time-consuming, can be hazardous, and this procedure should be discouraged."

Lascoff[5] has stated, ". . . recently a child's life was saved by the quick identification by a pharmacist of some tablets which had been swallowed by the child in excessive quantity. . . .late at night. The pharmacy where the prescription had originally been filled was miles away and was closed." Lascoff[5] went on to state that the local pharmacist identified the tablets, notified the local physician of their contents, provided the antidote requested, and saved the life of the child. I believe that the only valid reason for identification by physical properties or the publication of tablet and capsule identification charts or guides is when such cases of poisoning occur; that is, a person cannot reach the physician who prescribed the medication or the pharmacy where the medication was dispensed. However, even though one life may be saved by identification by appearance, encouraging such a procedure may lead to other lives being lost.

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In 1953, Greenberg[9] stated that one of the results that students are expected to gain from compounding specialty prescriptions in college is familiarity with the physical appearance of the specialty drug and container.

In 1958, Katz[2] stated that state board identification procedures provide an opportunity to discover that candidates have never handled certain products which are very common in pharmacies today, and make the reliability of their internship questionable. Vitale[3] commented that the identification procedure "immediately pinpoints whether a particular intern is getting the proper preceptor training."

On the other hand, Swain[10] pointed out in 1938 that the Maryland Board of Pharmacy has come to the conclusion that it is a waste of time to give so-called specimens for examination. In addition, Fonda[11] reported in 1939 for the Standing Committee on Pharmacy by stating, "The committee feels that the identification of chemicals and galenicals upon the basis of superficial sensory examination is unscientific and detracts from the validity and reliability of the Practical Pharmacy Examination as a measure of the fitness of the candidiate to practice pharmacy. . . . In 1937, Dr. Albert Blakeslee presented 45 members of the American Philosophical Society with samples of sugar and asked that they identify this substance which they probably use every day. Of these eminent, trained scientists, only 2 of the 45 were successful in identifying it as sugar. It was reported as being tasteless by 11, bitter by 5, and sweet by 18 others, although they were not able to identify the sample." Other educators[12] pointed out in 1954 that it is not good policy to have students quizzed on their ability to identify proprietaries by sight, because color, shape, and odor are not basic properties and are quite often changed. These educators felt that it was a bad practice for the student to acquire a sense of false security.

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Dean Leuallen[13] stated in 1958 that many colleges give review courses in recognizing proprietaries and those who recognized the proprietaries (on board examinations) may simply have attended such a college. "Their (the candidates) practical experience may have been less valuable than those who could not recognize the proprietaries."

Perhaps you may differ with me; however, it is my opinion that identification procedures tend to give dangerous encouragement to reliance on identification by appearance instead of by the reading of the label, and the more the practice of identification by appearance is practiced, the greater is the danger.[14] Therefore, state board identification examinations should be eliminated because they tend to encourage the dangerous procedure of identification by appearance.

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* Footnotes omitted in original document in evidence.

PLAINTIFF'S EXHIBIT 138 — EXCERPTS FROM REPORT OF ATTORNEY GENERAL ABRAMS AND CONSUMER AFFAIRS COMMISSIONER RATNER ON NEW YORK GENERIC DRUG SUBSTITUTION LAW, MARCH 13, 1979

REPORT OF ATTORNEY GENERAL ROBERT ABRAMS AND CONSUMER AFFAIRS COMMISSIONER BRUCE RATNER ON NEW YORK GENERIC DRUG SUBSTITUTION LAW

Prepared
By

STEPHEN MINDELL
Assistant Attorney General
in Charge
Bureau of Consumer Frauds
and Protection

March 13, 1979

PURPOSE OF SURVEY

Between January 18 and February 14, 1979, a task force led by New York State Attorney General Robert Abrams' office and including New York City Consumer Affairs Commissioner

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Bruce Ratner's office and the New York State Board of Pharmacy,* conducted a field survey of randomly chosen retail drugstores to assess the extent of their compliance with the generic drug law.

The survey covered the five boroughs of New York City, Buffalo, the Capitol District, Syracuse, Rochester and the Counties of Nassau, Suffolk, Westchester and Rockland. In all, 283 drugstores were visited and presented with a prescription for drugs by an investigator posing as a consumer.

A prime objective of the field inspection was to uncover violations of the consumer protection laws including the Generic Drug Law (Education Law § 6810.6 and § 6816-a, Drug Poster Law (Education Law § 6826), Pharmacist Badge Identification Requirement (Education Law §6808-a), drug container and child safety cap requirements (USCA Title 15 Section 1471 et seq.) for purposes of approriate enforcement action.[1]

Another important purpose of the survey was to compile field data on how well the generic drug law and related consumer protection laws are working in order to determine the need for legislative changes and other action to strengthen the protection afforded to the public.

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* The Board of Pharmacy showed splendid cooperation throughout the survey — participating actively in the planning and execution of the survey and agreeing to launch disciplinary proceedings against pharmacies who violated the law. We extend sincere thanks to the Board and its Executive Secretary for this assistance. However, the results of the survey and other research have led us to certain criticisms of the performance and effectiveness of the Board and proposals for change with which the Board disagrees.

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SUMMARY OF FINDINGS

The Attorney General and the Commissioner found that a combination of factors is denying consumers millions of dollars in potential benefits from New York State's generic drug law. Because of resistance to change on the part of physicians, violation of law and other anti-consumer practices by pharmacists, and a lack of vigorous enforcement by the State Board of Pharmacy, it is estimated that less than one consumer in 25 reaps the full financial benefit of generic drug substitution.

Specifically, the survey disclosed that:

* 67 of the 283 pharmacies, nearly one quarter, violated the generic drug law when filling the prescription;

* even when they dispense a generic drug, pharmacists are not passing along the full dollar savings of those drugs to consumers;

* prices vary widely from pharmacy to pharmacy for both brand name and generic drug products. The retail price charged by some pharmacies for the generic substitute is often significantly higher than the retail price charged by other pharmacists for the brand;

* the State Pharmacy Board has given prosecution of violations of generic drug law and drug price poster law a low priority. Few proceedings (only 54) seeking a monetary penalty of a maximum of $500 have been brought. In 48% of these proceedings no penalty was imposed. In most others, the penalty imposed was $250 or less;

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* although violation of the generic law or the drug price poster law constitutes a class A misdemeanor, no cases have been referred by the Pharmacy Board to district attorneys for prosecution;

*the bulk of enforcement of these laws by the Pharmacy Board has come as a response to consumer agency interest and prodding and not as a result of the initiative of the Board;

* few New York prescriptions (22.5% are signed by doctors so as to permit substitution of less expensive generic drug products. Since the generic drug law became effective in April 1978, the percentage of prescriptions permitting substitution has declined;

* the present drug price poster is inadequate because it does not require a pharmacist to list his current selling price for both brands *and* generics in every instance and does not have clear cross references;

*the current notice to consumers at the bottom of the drug price poster provides little helpful information;

* a substantial number of pharmacists do not give prescription price information to consumers over the telephone thereby making comparison shopping difficult;

* the Pharmacy Board has not followed-up with doctors who are using prescription forms which do not comply with the generic drug law;

* composition of the Pharmacy Board is overly oriented toward the profession and has inadequate consumer

representation — only two out of eighteen members are public members;

* a concerted education program to alert prescribers and consumers to the benefits of the generic drug law is needed.

RECOMMENDATIONS

The names of the 67 pharmacies found violating the generic drug law and related statutes are before the Board of Pharmacy for the initiation of proceedings. The Attorney General recommended that vigorous action be taken, and he plans to monitor the proceedings closely. Notices of the opening of Board proceedings for the assessment of monetary penalties are being mailed this week.

In addition to this enforcement action, Attorney General Abrams and Commissioner Ratner recommend the following legislative proposals:

1. Criminal Enforcement: Education Law § 6811 should be amended to give the Attorney General statutory power to bring criminal prosecutions against violators of the generic drug law.

2. Civil Enforcement: Education Law § 6515 should be amended to give the Attorney General specific authority to seek restitution for aggrieved customers and a civil penalty for violation of the generic drug law.

3. Education Law § 6816-a should be amended to require pharmacists to pass along to consumers the full savings of generic drugs. The savings is to be measured by the

difference between the wholesale cost to the pharmacist of brand name and generic drugs.

4. Education Law § 6810.6a should be amended to eliminate preprinted signature lines "dispense as written" or "substitution permissible" and require prescriber to *handwrite* "medically necessary" if he disapproves substitution.

5. Education Law § 6810.6b should be amended to require prescriber to inform patient why substitution is not permissible.

6. Education Law § 6816-a should be amended to give consumers a limited override so that brand names can be dispensed instead of generics in emergency situations.

7. Education Law § 6826(3), the drug price poster law, should be amended to aid consumers in comparative shopping by providing both brand and generic prices for each drug listed and by rewriting the notice at the bottom of the poster.

8. Education Law § 6508 should be amended to require that 51% of the members of the Pharmacy Board and all other professional licensing boards be representative of consumer interests having no personal interest in the regulated profession.

9. The Federal drug formulary should be used to replace New York State's "green book."

Plaintiff's Exhibit 138

10. The Regents Rules should be amended to require a pharmacist to provide requested drug information over the telephone.

11. The Attorney General supports enactment of Senate Bill 1321 re: publication of a consumer generic drug guide by the State.

PLAINTIFF'S EXHIBIT 142 — STIPULATION DATED FEBRUARY 28, 1980 RE: RESULTS OF "CHUNG SHOPPING"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 78-372 (EHN)

IVES LABORATORIES, INC.,

Plaintiff,

-against-

DARBY DRUG CO., INC., et al.,

Defendants.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff and defendant, Premo Pharmaceutical Laboratories, Inc. (hereafter "Premo"), through their respective attorneys, that Mr. Douglas Chung of 344 East 17th Street, Brooklyn, New York 11226, a witness listed in the Pretrial Order herein, would have testified if called as a witness at trial as follows:

1. Mr. Chung is registered to practice pharmacy in the State of New York.

2. In or about December, 1979, at the request of attorneys for Premo, Mr. Chung conducted shoppings at twenty-five pharmacies in the New York metropolitan area. He shopped

Plaintiff's Exhibit 142

each twice, once with a prescription for CYCLOSPASMOL Dispense as Written, once with a prescription for Cyclandelate Dispense as Written.

3. In the twenty-five pharmacies shopped, there was no illegal substitution in connection with the prescriptions for CYCLOSPASMOL Dispense as Written.

4. In the twenty-five pharmacies shopped in connection with the prescription for Cyclandelate Dispense as Written, the prescriptions were filled in each instance with the generic product. Two of the prescriptions, however, were labelled Cyclospasmol generic and 14 of the 25 omitted the name of the manufacturer or of the manufacturer and distributor.

5. Two pharmacies which filled prescriptions for both CYCLOSPASMOL and Cyclandelate charged more for the generic than they charged for the CYCLOSPASMOL. Twenty-three of the pharmacies that filled prescriptions for both CYCLOSPASMOL and Cyclandelate charged less for the generic than they charged for CYCLOSPASMOL.

6. A chart showing the names of the pharmacies shopped, the price charged for equal quantities of the various products, and, in the case of the generic, the identification shown on the label, is attached hereto as Exhibit A.

Dated: New York, New York
February 28, 1980

Plaintiff's Exhibit 142

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Plaintiff's Exhibit 142

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Plaintiff's Exhibit 142

Name of Store	CYCLOSPASMOL PRESCRIPTION	CYCLANDELATE PRESCRIPTION
1. East View Apothecary 34 East 57th Street New York, N.Y. 10021	Ives Product $5.30	Cyclandelate $3.00
2. Four Corners Pharmacy 1749 Victory Blvd. Four Corners, Staten Island, N.Y.	Ives Product $5.75	Cyclandelate $3.95
3. Prescriptions Exclusive 1229 Third Avenue New York, N.Y. 10021	Ives Product $5.00	Cyclandelate $2.75
4. Prescription Limited of Madison Avenue 1151 Madison Avenue New York, N.Y. 11028	Ives Product $6.10	Cyclandelate $4.75
5. Rite Aid Pharmacy 146 East 36th Street New York, N.Y. 10023	Ives Product $3.92	Cyclandelate Bolar $2.30
6. Barney's Prescriptions 41 John Street New York, N.Y. 10038	Ives Product $3.95	Cyclandelate (capsules marked with #258) $1.99
7. Church Pharmacy 1300 Church Avenue Brooklyn, N.Y. 11225	Ives Product $4.98	Cyclandelate $2.98

Plaintiff's Exhibit 142

8.	Dan's Grand Avenue Pharmacy 42-16 30th Avenue Astoria, L.I.C., N.Y.	Ives Product $5.95	Cyclandelate Schein $3.45
9.	Group Drug Service 101 Maiden Lane New York, N.Y. 10038	Ives Product $4.50	Cyclandelate $4.75
10.	Sav-On Drug Stores 1545 Forest Avenue Staten Island, N.Y. 10302	Ives Product $4.28	Cyclandelate Vanguard $2.82
11.	D & R. Pharmacy, Inc. 146 Smith Street Brooklyn, N.Y. 11201	Ives Product $8.10	Cyclandelate $3.95
12.	Pathmark Pharmacy 376 Fulton Street Brooklyn, N.Y. 11202	Ives Product $4.09	Cyclandelate IDE Bolar $2.19
13.	DJ Drug 65-45 99th Street Forest Hills, N.Y. 11374	Ives Product $4.95	Cyclospasmol generic $2.45
14.	Willner Drug Shop, Inc. 1725 Foster Avenue Brooklyn, N.Y. 11230	Ives Product $4.95	Cyclandelate $3.25
15.	Norwood Rexall Drugs 31-12 Broadway Long Island City, N.Y.	Ives Product $4.95	Cyclandelate Ace Inwood $3.95

Plaintiff's Exhibit 142

16.	Group Drug Service 3 Beekman Street New York, N.Y. 10038	Ives Product $4.50	Cyclospasmol generic $3.95
17.	Health-Wise Pharmacy 2017 Church Avenue Brooklyn, N.Y. 11226	Ives Product $5.10	Cyclandelate $8.35
18.	Lipton Chemists, Inc. 14 Newkirk Plaza Brooklyn, N.Y.	Ives Product $4.95	Cyclandelate $3.25
19.	Abraham & Strauss Prescription Dept. Fulton at Hoyt Brooklyn, N.Y.	Ives Product $4.64	Cyclandelate Inwood $1.99
20.	Bonus Drug, Inc. 31-04 Broadway Astoria, N.Y. 11106	Ives Product $4.75	Cyclandelate Premo $3.84
21.	Kings Pharmacy 93-17 63rd Drive Rego Park, N.Y. 11374	Ives Product $4.79	Cyclandelate generic $2.99
22.	Pathmark Pharmacy 880 Third Avenue New York, N.Y. 10022	Ives Product $4.19	Cyclandelate $2.29
23.	Greenfield the Chemist 1525 Cortelyou Road Brooklyn, N.Y.	Ives Product $5.25	Cyclandelate pharmadyne $2.75

Plaintiff's Exhibit 142

24.	BJS Drugs Inc. 69-65 Yellowstone Blvd. Forest Hills, N.Y. 11375	Ives Product $4.53	Cyclandelate $2.49
25.	Prescriptions Limited 7 John Street New York, N.Y.	Ives Product $3.75	Cyclandelate Cord $3.25

PLAINTIFF'S EXHIBIT 143 — JOINT DESIGNATED EXCERPTS OF DEPOSITION TESTIMONY OF PREMO BY SEYMOUR BLACKMAN, MAY 4, 1978

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil No. 78-C-372

IVES LABORATORIES, INC.,

Plaintiff,

-against-

DARBY DRUG CO., INC., et al.,

Defendants.

Deposition of Defendant Premo Pharmaceutical Laboratories, Inc. by SEYMOUR NORMAN BLACKMAN taken by plaintiff on Thursday, May 4, 1978.

* * *

[4] SEYMOUR NORMAN BLACKMAN having been first duly sworn by the Notary Public was examined and testified as follows:

EXAMINATION BY MS. DRISCOLL:

Q. Would you state your residence address for the record Mr. Blackman? A. 284 East Palisade Avenue, Englewood, New Jersey.

Plaintiff's Exhibit 143

Q. And are you employed? A. I am.

Q. By whom? A. By Premo Pharmaceutical Laboratories, Inc.

Q. And is that one of the defendants in this case? A. Yes.

Q. And what is your position at Premo? A. President and chairman of the board.

Q. What is your educational background, Mr. Blackman? A. Bachelor of Science, Columbia University College of Pharmacy, and two years of medical school.

Q. And did you get a degree? A. Not at medical school, but in pharmacy.

Q. Yes, and when was that? A. 1942.

[5] Q. And can you describe for us generally what your work experience has been since graduation? A. After graduation I did go to medical school for two years, and in 1944 I was in the U.S. Navy as a Pharmacist's Mate, and finished there in 1946.

I went to work at that time for Premo Pharmaceutical Laboratories until 1951. I left and formed my own company, Omega Hospital Supply, Inc., stayed there until 1959 when I made arrangements to work for Premo again for two years, and I split my time during 1959 and 1960.

At the end of 1960 I returned to Omega. I remained there till 1972, when I acquired Premo Pharmaceutical Laboratories and became the president.

Plaintiff's Exhibit 143

* * *

Q. Would you tell us generally what business Premo is in? [6] A. They are manufacturers of generic drug products.

Q. And how long have they been in business? A. As a corporation since 1927. Prior to that, I think in 1916, it was Blackman and Fink, and then in 1918 it was Blackman and Blackman, but the corporation as Premo was formed in 1927.

* * *

[7] Q. And how many people are on your sales staff? A. Three.

Q. And what do they do? A. Three people. They contact wholesale druggists and offer our products for sale, mostly by telephone.

* * *

[10] Q. And to whom was that catalog distributed? A. It was mailed to every known drug wholesaler and chain and cooperative buying organization in the United States. Some three thousand in all, I believe.

* * *

[12] A. I think our employees make little or no effort to sell this product.

* * *

Plaintiff's Exhibit 143

Q. What is the basis for your conclusion that they make little or no effort to sell Cyclandelate? A. It is not a very profitable item. We instruct them not to push it. It is manufactured by many other generic houses. It is quite competitive and we have better items to sell that have a higher volume in the trade and are more profitable.

* * *

[13] Q. Now, did you play any role in the decision of Premo to begin selling Cyclandelate? A. Yes.

Q. And would you please tell us what your role was? A. Well, I remember that we were looking for products to put into the line. We were discontinuing many products. Our sales manager at the time said, "Here is a product where the patent has expired; it enjoys a fair sale; other generic houses have it. Why can't we have it?" And —

* * *

[14] Q. Did you play any role in selecting the particular form in which Premo's Cyclandelate product was sold, and by "form" I mean the color, shape, whether it is a tablet or a capsule. A. Yes.

Q. And did you make that decision? A. Well, I was part of the decision-making process.

Q. And who else was? [15] A. Well, there was myself and my son John and Mr. Silverang.

Plaintiff's Exhibit 143

Q. And can you tell me why it was decided to sell Premo Cyclandelate in the particular form as previously defined in which it is sold?

MR. COBRIN: Could I hear the previous definition of the form, please?

THE WITNESS: Color, shape, size. (A portion of the record was read back by the reporter.)

MR. COBRIN: And could you read the pending question, please?

(The pending question was read back by the reporter.)

THE WITNESS: Yes, because its form indicates the medicinal ingredient and the dosage strength.

Q. What do you mean it indicates the medicinal ingredient; can you explain that? A. In the medical field the form, which is the color, shape, size, or tablet or capsule, as you stated, would identify the active medical ingredient and the strength of the active medical ingredient.

Q. Do you know of any other blue capsule on [16] the market other than one which has the generic name Cyclandelate? In other words, are there any other blue capsules? A. Yes, I have seen other blue capsules.

Q. Do those blue capsules identify an active ingredient? A. Yes, I would say so.

Q. It would be a different active ingredient, though, wouldn't it? A. It might. It could be the same. If it is the same

Plaintiff's Exhibit 143

color blue or the same color blue and red it would be Cyclandelate. I know of no exception.

Q. Now — A. —but this color of blue and gray would be anything but Cyclandelate.

Q. In other words, you have never seen or don't know of another capsule other than Cyclandelate which is in the particular shade of blue?

* * *

A. Well, I know of none offhand, but I think the blue is a standard blue color and there may be some.

* * *

[21] Q. Now, if I showed you your Exhibit 3 and you did not know what bottle it came from, could you tell me whether this capsule, Exhibit 3, is a Premo product or not? A. No, I could not, but I could readily differentiate it from Ives' product.

* * *

[22] Q. And if you were shown just this capsule and did not know what bottle it came from, could you tell it was a Premo product? [23] A. I could not.

* * *

Q. At the time that the selection of the color blue and the selection of the colors blue and red was made, were you aware of the Ives Cyclospasmol product and its coloring? A. Yes.

Plaintiff's Exhibit 143

Q. Did you copy that coloring? A. Yes.

Q. Now, you stated at the beginning of your testimony that your company is in the business of selling generic drugs and can you just, so that we are clear about what you mean, define what a generic drug is for the record? [24] A. Well, it has a very broad definition, but my definition is simply a pharmaceutical product at a reasonable price.

Q. That is your definition of a generic drug? A. That is my definition.

* * *

Q. Have you ever used a brand name to identify your Cyclandelate capsules? A. No.

Q. Is that true of your other generic drugs as well? A. No.

Q. In other words, sometimes you do use a brand name? A. Yes.

* * *

[26] Q. And is your Isoxsuprine product in the same color, dosage, form and size as the Vasodilan product? A. Precisely.

Q. Was that intentional? A. Of course.

Q. Why do you say "of course"? A. Because it is standard operating procedure for fifty years. And no one wants to cause confusion in the medical business. Very dangerous.

Plaintiff's Exhibit 143

Q. It is standard operating procedure of Premo for fifty years? A. I would say of Premo surely, and perhaps other people who are in the generic drug business who bring medication out in a second position — in time, I mean.

Q. Now, you spoke about confusion.

[27] Can you tell me why you believe that the color must be duplicated to avoid confusion?

MR. COBRIN: Are we limiting ourselves to Cyclandelate?

MS. DRISCOLL: Yes. A. Color, shape, size, dosage, form in a tablet, capsule, liquid, odor, taste are all things that can be perceived by people by their sensations. And starting with the patient, the patient identifies his medicines by all of these things, because traditionally the medication was never labeled, and —

Q. Pardon me? A. — even — the medication was traditionally never labeled with the active ingredient. And this has been so for hundreds of years.

And starting with the patient, they relied on the color, shape, size, odor to know whether they were getting the right chemical entity and the right dosage of that chemical entity.

The same thing prevails down the line, so the nurse would likewise identify the medication by all these physical traits, and so would the physician.

And so would staff in the hospital. And so would assistants in the pharmacies.

Plaintiff's Exhibit 143

* * *

[30] A. I never made that statement. I never indicated that any nurse would simply grab a blue capsule because she knew Cyclandelate 200 mg. was a blue capsule. Quite the reverse.

If she saw a red capsule, she would be alarmed and know that a mistake had been made. But no, she would not go over and simply grab a blue capsule because it was blue.

I never indicated that. I think it's idiotic.

* * *

[31] Q. Now, are you aware of any generic products on the market that do not copy the nationally branded generic?

* * *

A. I know of a recent effort to products manufactured by major drug manufacturers masquerading as generics that are marketed in different color. I don't know what they are trying to prove. It's a very recent movement.

* * *

[32] To come back and answer the question more specifically, I know of no generic drug that does not come in the same color, shape, size as a name brand drug.

* * *

[33] Q. Are all phenobarbital tablets in the same color, size, shape? A. No.

Plaintiff's Exhibit 143

* * *

[37] A. No, we do not advertise it. We think it's a stiff product.

Q. What does "stiff" mean? A. Very poor sales potential.

* * *

[44] Q. Now, below the word "Cyclandelate capsules" there is a parentheses and the word "comp." appears there. What is that an abbreviation for? A. Comparable.

Q. And what was the basis for your stating that in parentheses "The product is comparable to Cyclospasmol"? A. Well, Cyclospasmol contains 200 mg. of Cyclandelate and it has the same active ingredient.

* * *

Q. Now, for example, I will show you [45] Blackman Exhibit 1, where there is a reference to Cyclandelate capsules and the words "Cyclospasmol equivalent."

What does "equivalent" mean in that connection? A. It means it has the same physiological activity, the same uses, indications, cautions, dosage.

* * *

[47] Q. Now referring for example to Exhibit 10 and to the heading over the top column "Premo Brand," are the items listed below that heading Premo brands? A. Oh, yes, they are all. We offer all those items under the Premo brand.

Plaintiff's Exhibit 143

Q. And what about those in the right-hand column, are they Premo brands? A. They are brands other than Premo.

Q. And can you tell me how in your opinion a [48] wholesaler was to know that they were not Premo brands, if you can give me an opinion on that. A. Yes, I can give you an opinion. The wholesalers that we sell to are known as generic specialists and it is simpler to list the generic product and the equivalent product alongside it so that they could identify which product it was equivalent to or which name brand it was equivalent to.

So it's just a form, and even though it doesn't say "brands other than Premo" at the top of the right column, the customer is very well aware of what it is.

Q. Now I refer to Exhibit 11. Is this one of those that was mailed out or is this an internal one? I didn't keep track — A. I believe this was mailed but not to a large group, about 200.

Q. And this has no heading except for "tablets and capsules." Can you tell me what is in the left-hand and what is in the right-hand column there? A. Yes, this is a mailing to a select group of customers, about 200 wholesalers who specialize in generic drug products, and they are used to seeing the generic product in the left-hand column and the [49] name brand column, a list of — on the right-hand side.

So that while there is no indication as to what is listed here, the customer knows very well that the left-hand column is the Premo generic and the right column the name brand equivalent.

Plaintiff's Exhibit 143

Q. Now when you say it's a custom, is it a custom of Premo or a custom of generic drug houses generally? A. Surely a custom of Premo and generally a custom of generic drug houses.

Q. Now when did you first start your custom of listing Premo products on the left and branded products on the right? A. I guess about 1971.

Q. And in what media was this used? What I mean is do you do this in product lists, price lists, catalogs? A. In a quick mailing of product lists we would use this format. In formal catalogs we would not. Formal catalogs showing prices and uses perhaps and indications, we would not use columns but we might state the Premo name and in parentheses "equivalent to a certain name brand" and not use columns at all.

Q. Now I notice in Exhibit 8 for example [50] that contrary to custom you have the branded one in the left-hand column and the Premo product in the right-hand column.

Can you tell me if this is also a custom of Premo? A. No, it is not a custom of Premo. This happens to be a price sheet and the columns are plainly identified, those on the left national brand and in the right column the heading says "Premo equivalent." And it is not a custom but I don't think there is any confusion here and I am not ashamed of it.

Q. Now referring to Exhibits 9, 10, 11, 12, 13 and 14, which are exhibits with the columns, can you tell us how the custom would become known to people where even on these particular product sheets there never was any heading for the right-hand column; in other words, how would people get to know that that's what this means if there never was a heading there? A. Well, people are generally intelligent and animals of

Plaintiff's Exhibit 143

habit. You don't have to identify both columns, they know we are a generic house, if the left column says Premo brand and the right column is unidentified the human being, with his infinite wisdom would know the right hand column was the name [51] brand.

* * *

[67] Q. Have you ever used your NDC number by affixing it directly to a Cyclandelate capsule? A. Not to my knowledge.

* * *

[68] Q. Have you filed a new drug application in connection with Cyclandelate? A. We have attempted to file, but I believe the answer to your question is no. We have not filed.

Q. Have you filed an abbreviated new drug application in connection with Cyclandelate? A. I misunderstood your first question. We have never attempted to file or filed a new drug application. We attempted to file an abbreviated new drug application, but we have neither one on file, an ANDA or an NDA.

Q. Can you please state for the record why your attempt was apparently foiled? A. Dr. Seif's office, who handles abbreviated new [69] drug applications, stated that since the drug has never been shown to be effective, it could only be marketed as other Chapter XIV drugs, or what we call in the trade Judge Brieant decision drugs, without an ANDA.

The original manufacturer, however, which had an NDA on file would be able to continue to sell the product under their

Plaintiff's Exhibit 143

original NDA, notwithstanding the law on the books that requires a drug to be both effective and safe.

It is a peculiar twist, a judicial decision over a law, and we suffer in that we are not allowed to apply for an abbreviated new drug application.

* * *

Q. Now, you said "Dr. Seif's office". Was it Dr. Seif himself who communicated this to you or was it someone else in the office? A. It was Dr. Seif specifically.

Q. And did he talk to you personally? A. He did.

Q. When was this? [70] A. In his office.

Q. When? A. I can't give you the specific date.

Q. Can you give me the year? A. No, I would be guessing. I could, of course, look it up in the records.

Q. Would you please? A. Yes.

Q. We will leave a space and insert the date of the meeting.

(Information to be furnished by the witness as follows:)

Q. What did Dr. Seif say to you and what did you say to him in connection with this matter of your attempt to file an ANDA? A. He said he would give me a number, a filing number, but not to consider the application as officially filed because his legal department advised him not to accept the abbreviated new drug application.

Plaintiff's Exhibit 143

Q. And did — excuse me. A. He further said that according to Judge Brieant's [71] decision, we could continue to sell this drug without an effective new drug application until the holder of the NDA showed the product to be effective, and once the holder of the NDA proved the product to be effective, they would accept our application.

* * *

[88] Q. Have you ever done any clinical testing on Cyclandelate, the Cyclandelate product? A. No.

* * *

[89] Q. And do you know whether the Cyclandelate product is a — can we call it a one-time product, or one that is taken regularly over long periods of time? A. If the physician thinks it works, it would be used over a protracted period of time, perhaps for the remainder of the natural life span of the individual taking the product.

* * *

[97] Q. Now, is it your impression that the plaintiff in this case is trying to prevent your sale of Cyclandelate?

* * *

[98] A. It is my distinct impression that the Ives company would like to foreclose or forestall me from making any sales of Cyclandelate by whatever means they could find.

Q. And that is what your answer is based on? That understanding is the basis for your answer about your good name and credibility, and so forth — A. No, not at all.

Plaintiff's Exhibit 143

Q. — being hurt? A. It has nothing to do with my answer. My answer to a question is predicated on the question, not on an attitude that I may have to a certain company.

Q. Would your good name, believability, credibility and your ability to instill confidence in people [99] be injured if you were allowed to sell Cyclandelate but in a color other than blue or blue and red? A. I believe so.

Q. And what is the basis of that belief? A. I believe I have instilled in my customers, throughout the many years that I have been in this business, that it is my right and my privilege to supply medication in a safe form that will not injure the patient or cause confusion in the medical field. And this has to do with my good name and my professional status.

Q. What do you mean by "safe form"? A. If you put medication out in a color other than what we are — the product would indicate, or the dose would indicate, you might cause irreparable damage.

Q. How? A. Well, let's say — let's say, for example, what Ives would seek here came about and every manufacturer put out the same product in a different shape, size and color. The confusion would be legion. There would be no way that a nurse or — or an aide administering medication in a hospital could know what it was they were dispensing by looking at it; nor could a patient receiving medication in the pharmacy know what they were getting, because traditionally patients were kept in [100] the dark. Not only didn't they know the manufacturer, which is so obscure as to be almost ludicrous, but they didn't even know the name of the medication they were taking, and they relied very much on the color, shape and size of the product.

Plaintiff's Exhibit 143

If this were taken away from the patient, their whole safety mechanism would be destroyed.

Q. So that — A. And that would be dangerous.

Q. What is the "safety mechanism"? I really want — I am not sure what you mean.

* * *

Q. And I am saying I don't know what the words "safety mechanism" mean. A. I am referring to the sensibility of touch, sight, [101] smell, which protects human beings from danger. When we see something that is red, we react. When we see medication that we are taking, that is presumably active in order to do something to us, in a color that's different, or in a shape that's different, or in a size that's different, if this is denied us as human beings, the safety mechanism of our perception and our sensibilities would be denied to us, and that, madam, is dangerous.

Q. Yet you testified, did you not, that phenobarbital is sold in several different shapes? A. I did not testify to that, but I merely answered yes or no to a question, and I was not allowed to testify. But I could testify that phenobarbital is principally a white bisected tablet, different strengths coming in different sizes.

There are a few — I would call them exotic products in the market, of color which is precisely there to masquerade and deny the patient the knowledge of what they are taking. And so some manufacturers — not I — put their product out in a false guise to deny the patient the right to know what they are using. And that is what you are referring to now.

Plaintiff's Exhibit 143

* * *

[105] Q. Mr. Blackman, do you sell your Cyclandelate product with the purpose of giving the pharmacist a product which it can sell instead of Cyclospasmol? And I don't mean to imply illegally. I just mean are you doing this to offer him a product that he can sell instead of the advertised product? A. Yes.

* * *

Q. Now, I am going to show you what has been submitted as Lowenkron Exhibit L-X and state on the record that this is a photograph of Cyclandelate capsules —

MR. COBRIN: Do you have —

Q. — the label of which refers to Forest Laboratories and ask if you will look at Exhibit L-X.

MS. DRISCOLL: I am sorry, do I have what —

MR. COBRIN: Do you have the actual — strike it. A. Is there a question for me?

Q. No, I am just asking you to look at it. [106] A. I have looked at it. Thank you.

Q. Now it appears from this photograph that Cyclandelate 200 mg. capsules are yellow and the 400 mg. are green; would you agree with that just judging from the photograph? A. Yes.

Q. In your opinion are they unsafe drugs? A. Yes.

Plaintiff's Exhibit 143

* * *

Q. Now the 200 mg. Cyclandelate capsule in that photograph is the color red. Do you consider that to be an unsafe product? A. Unsafe and ill conceived.

Q. Pardon me? A. Unsafe and not well conceived.

Q. Is there a reason why your answer was elaborated in connection with the red capsule as [107] opposed to the yellow and green ones, namely ill conceived? A. I think they are all ill conceived — not well conceived, and I think that any practice that leads to proliferation of shapes, colors and sizes for a medication that's well known is dangerous and badly conceived and works not in the well interest — good interest of the public.

* * *

[111]A. The prescription label in most states requires the name of the manufacturer. If it's a trade name they do not have to put the name of the manufacturer.

So if it were Cyclospasmol it would say on the label "Cyclospasmol." If it were Cyclandelate of a generic type, the label would say "Cyclandelate Premo."

Now let's say I was in a state that did not require the identity of the manufacturer on the label — and there are such states; the next thing I would go to is to see if there were an imprint on the capsule.

Ives' capsule is imprinted with the name and therefore would be readily identifiable.

Plaintiff's Exhibit 143

* * *

[115] Q. Do they ever in their orders refer to the color of the product? A. I have no direct recall of their ordering the product by color. So I would say no.

* * *

[117] Q. Now, is your use in connection with the Cyclandelate products of the same color, shape and appearance as the Cyclospasmol products have — is that an essential part of your promotion of your product?

* * *

A. In every respect but their imprint of their name.

Q. Is the fact that your product has the same color, shape and appearance important to your promotion of your product? A. It is important, yes, in the promotion of the [118] product.

* * *

Q. Have you ever sold your Cyclandelate product to any governmental entity? A. Not directly. Not to my knowledge.

Q. Have you ever attempted to bid for government sales in connection with your Cyclandelate product? A. Not to my knowledge.

* * *

Plaintiff's Exhibit 143

[122] Q. Now, referring to Exhibit 9: Was there a reason why the color of Cyclandelate from Premo was not mentioned, whereas the color of at least three other products was?

* * *

A. The product Hydrochlorothiazide, the patent was [123] owned by Ciba with an exclusive license through Merck Sharpe & Dohme. They marketed their color — their product was a peach color — I mean a yellow color — and Merck Sharpe & Dohme was a peach color. And so, in that case, there were two manufacturers of a patented product distributing the product into the marketplace, and Ciba with the name Esidrix and Merck Sharpe and Dohme with the name Hydrodiuril. The products were the same size, and they were tablets, but there was a slight difference in color, one peach and one yellow.

And, so, generic manufacturers made both colors available. And there was a little confusion in the trade. It's an exceptional thing to have two different acceptable colors of the same medication, as stated, but all the generic manufacturers leaned toward the Merck product because they perhaps sold 75 percent of the name brand Hydrodiuril — Hydrochlorothiazide.

We no longer make either peach or yellow, but we did, after a while, discontinue the Esidrix-type color.

The same thing applies, the identical thing, to the liquid preparation potassium chloride. There were two leading manufacturers. Both came out about the same time. One was red, Kay Ciel, and the [124] other was yellow, Kaochlor. And so both colors were made available.

* * *

Plaintiff's Exhibit 143

[125] Have you ever had occasion to sell a tablet or capsule in two colors in any other instance?

And here, again, by "two colors," I do not mean two colors joined into one capsule, I mean you sold the same product in, for example, red and purple. A. Yes.

Q. And what was that occasion? A. The occasion was when we sold APC tablets to physicians who wanted to dispense aspirin compound and have it look like something else, and they wanted to keep the truth from their patients that they were simply taking APC tablets, so they were made available in not only white, which was standard, but in red and green, to mislead the public.

Q. And you did the same? You complied with this request? A. Yes. Hospitals and physicians found that this was a way to make medication more effective. Patients knowing that the aspirin compound didn't work, when they got something in red or green, they thought it was stronger and they thought it was working better.

* * *

[128] Q. Do you know if there are wholesalers who prefer getting a branded product as opposed to a generic product? A. I know of no wholesaler that would prefer one over the other. They have sales for both and they require both.

Q. And what about pharmacies? A. Yes, there are pharmacists who prefer to deal in name brands only.

* * *

Plaintiff's Exhibit 143

Q. And can you answer as to physicians; are there physicians who prefer to prescribe brand name products? A. Yes.

* * *

[129] Q. Are there physicians who prefer to your knowledge to prescribe for example Cyclospasmol as opposed to a generic Cyclandelate? A. There are.

Q. And are there patients who prefer to have brand name Cyclandelate, namely Cyclospasmol, prescribe for them as opposed to a generic? A. I — I am — I know there are —

* * *

[133] Q. And do you have knowledge based on this experience of yours as to — or do you have an opinion, excuse me — as to whether or not it is easier for a pharmacist who wishes to illegally substitute — I am not saying that you have any specific knowledge of that, but do you have an opinion as to whether it is easier for such a pharmacist to fill a Cyclospasmol [134] prescription with Cyclandelate capsules if the Cyclandelate capsules are the identical color —

MR. COBRIN: I'd like to hear the question.

Q. — as to the Cyclospasmol?

* * *

[135] THE WITNESS: Yes, I think I can. A. I think it's obvious if a man is going to do something illegal like pass

Plaintiff's Exhibit 143

counterfeit money it's easier if he has a good imitation. And to that extent if a man is intent on breaking the law the same color, shape, size, and so forth would make it easier for him to break the law.

* * *

[136] Q. No, I believe you have also testified, Mr. Blackman, that you are somewhat familiar with the way drugs are used in a hospital atmosphere.

Could you describe this form us in more [137] detail? Is there a room where drugs are kept generally? A. Generally, there is a pharmacy in the hospital and orders are sent down to the pharmacy and they will for most medications send up a unit dose for the medication — for the patient.

In some cases they send up a day's supply. Let's say, for example, a patient is to take three capsules a day. Three capsules would be sent up for the patient. The name of the medication would be indicated, the name of the patient and the bed number, and the nurse in charge of dispensing medication would take one of, say, three capsules and at a prescribed period bring a tray around from bed to bed, giving each patient a paper cup or a plastic cup containing the medication.

Q. And there would be an indication of which medication was for which patient, so that there would be — A. Yes, to start out that exists, but when the medication leaves the nurse's desk it is put on a tray and there is an indication as to the bed and the patient's name, but there is no longer an indication as to what the medication is, and if it were of a different [138] color, shape or size, or if all manufacturers used their own color or

Plaintiff's Exhibit 143

their own dosage form, some being a pill, some being a capsule, an awful lot of confusion and — could result, and there surely would be danger.

Q. Now, would a nurse, if she saw, for example, a color that she was not familiar with — would it be her professional responsibility to check with the doctor in charge? A. Yes; with the pharmacist first. He —

Q. With the pharmacist first? A. Yes, it would be her professional responsibility I think if she didn't check she might be liable for a court suit.

* * *

PLAINTIFF'S EXHIBIT 144 — JOINT DESIGNATED EXCERPTS OF DEPOSITION TESTIMONY OF INWOOD BY SEYMOUR FIELD, MAY 19, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IVES LABORATORIES, INC.,

Plaintiff,

-against-

DARBY DRUG CO., INC., et al.,

Defendants.

Deposition of Inwood Laboratories, Inc., by SEYMOUR FIELD, taken by plaintiff . . . on Friday, May 19, 1978,

* * *

[4] SEYMOUR FIELD, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MS. DRISCOLL:

Q. Would you state your residence address for the record, Mr. Field? A. 153-11 58th Avenue, Flushing, New York 11355.

Q. Are you employed? A. Yes.

Q. By whom are you employed? A. Inwood Laboratories.

Plaintiff's Exhibit 144

Q. What is your position at Inwood Laboratories? A. Vice president in charge of sales and marketing.

Q. How long have you been with Inwood? A. A little over five years.

* * *

[9] Q. To what kind of customers does Inwood sell, in other words, what categories of customers? A. Wholesalers, distributors, chain stores, some hospitals.

Q. In what manner does Inwood promote its product, or promote the sale of its product to these customers? [10] A. We have two or three agents throughout the country who call on some of these accounts, mostly by telephone, since they cover large areas of the country, also by flyers that we mail out which were given to you, and basically that's the way we contact people.

* * *

[16] Q. Is it one of your large sellers? A. It would be in the upper ten.

Q. What was that? A. The upper ten of the items that we make. But whether it would be the largest or the next largest, it would be difficult for me to answer at this point.

Q. Is it an important part of your business, do you believe? A. Not really.

* * *

Plaintiff's Exhibit 144

[17] Q. In what other sizes, if any, are the cyclandelate capsules sold by you? A. Five hundred, thousands.

* * *

[18] Q. Is that an Inwood products? A. Yes.

Q. How do you know that? A. Because you took it out of a bottle that was so marked and sealed.

Q. Is that the only way that you know?

Can you tell by looking at it independently? A. No.

* * *

[19] Q. If I just showed you this red-and-blue capsule and you didn't know what bottle I had taken it from, would you know whether it was an Inwood product or someone else's products?

* * *

[20] A. I would not.

Q. Do you know when Inwood began to sell cyclandelate? A. To the best of my knowledge, in April of 1976.

Q. In April of 1976, did it sell it in both the 200 milligram and the 400 milligram forms? A. Two hundred miligram [sic] first; shortly thereafter 400 milligram.

Plaintiff's Exhibit 144

Q. When you say "shortly thereafter", would it have been — A. A few months.

Q. — a few months? A. Yes.

* * *

[21] Q. Can you give us the reasons why you selected blue for the 200 milligram capsule? A. The company had received many requests from generic distributors throughout the United States requesting the product in the size, shape and color.

* * *

[22] Q. What about the 400 milligram? What were the reasons for slecting the red-and-blue color for the 400 milligram capsule? A. Generic equivalents are generally the same size color and shape, in order not to confuse the entire medical field.

Q. The same size, color and shape as what, sir? A. As any other product which you produce generic.

* * *

[25] A. Naturally all products that are released to the trade are properly assayed as to chemical structure and impurities, dosage release, and whatever, whatever other criteria is required to produce a prescription item.

* * *

[26] Q. Do you know of any other generic cyclandelates currently on the market? A. Yes. They are produced by several

other generic manufacturers, such as Chelsea Drug, Cord Laboratories, Premo Pharmaceutical, Bolar, MD.

* * *

[28] Q. Do you know of any generic cyclandlelate [sic] or cyclandleate [sic] at all presently being sold that is not blue in the 200 milligram dosage size? A. Yes. Forest Laboratories, the parent company of Inwood Laboratories.

* * *

A. As cyclandelate 200 milligram, lime green color.

* * *

[29] Q. Do you know when Forest began distributing that form of cyclandelate? A. Approximately a year ago.

Q. Is it still distributing it? A. We are not.

* * *

[30] Q. Would you just tell us for the record what Exhibit 11 is, sir? A. Cyclanfor capsules, 400 milligram.

Q. Is that a Forest product? A. That is correct.

Q. When was that first distributed, if you know. A. Also approximately a year ago.

Q. Is that still being distributed? A. No.

Plaintiff's Exhibit 144

Q. To what kinds of customers were 10 and 11 di
if you know? A. Hospital accounts. Hospitals.

* * *

[32] Q. Are there any instances in which Inwoo
generic drug products has used a color different from
of the national brand product? A. Not to my know

Q. Has there ever been an occasion when Inwoo
a generic product in one color and then, for some re
had to change that color subsequently? A. No
knowledge.

* * *

[36] Q. Is it your practice for your various generic
to ever put your NDC number on the capsule? A.
time we do put an NDC number on a capsule is wh
control substance, which is required by law. Otherwise
not done it in the past.

* * *

[37] Q. Did there come a time, Mr. Field, whe
filed with the Food and Drug Administration for eit
drug application or an abbreviated ne
application? A. We did file.

* * *

[40] Q. Have you ever discussed with representati
Food and Drug Administration your ne
application? A. I didn't personally, but our cons

regulatory affairs, Mr. Joseph Barrows, had contacted Dr. Marvin Seife, who is in charge of this and was told that under paragraph 14 of Judge Bryant's decision, that they could not give ANDA.

* * *

[44] MS. DRISCOLL: "Plaintiff Ives is the holder on the original patent on this drug."

Q. I want to know just the basis of that statement which you made under oath. A. I can answer it in this fashion. We never manufacture a product until the product is off patent. When we are sure of this, we then proceed to manufacture the product.

* * *

[46] Q. I believe you state in this affidavit that Cyclospasmol is more expensive than the Inwood cyclandelate, is that correct?

* * *

[47] A. That is correct.

Q. At which level of distribution is it more expensive?

For example, at the initial sale, is your cyclandelate less expensive than Cyclospasmol; at the manufacturer's level, when you are selling to a wholesaler? Do you know? A. Our product is less expensive at all levels of sales.

* * *

Plaintiff's Exhibit 144

[48] Q. Have you ever done any actual study of the market for cyclandelate by, for example, going to pharmacies and finding out, in fact, whether or not the generic cyclandelate is sold to the ultimate consumer at a price less than Cyclospasmol? A. I didn't.

* * *

[49] Are you aware of any unlawful substitution other than in this case? A. I am not personally aware of this situation.

* * *

[52] Q. Is it your practice in the mailings that you distribute to prospective customers to indicate the color of, for example, the cyclandelate that you are offering? A. We do this on all submissions of price lists with or without prices.

Q. Why is that? A. To acquaint the prospective buyer that he is getting a generic equivalent, meaning the same product, the same size, shape and color, which is what, as I stated [53] earlier, is required by many states today under the substitution generic laws.

Q. You have been in the drug industry almost forty years, correct? A. Yes. All my life.

Q. Have you been aware that there are pharmacies who do make illegal substitutions in connection with generic products? A. I would say that I am aware of it, but —

Q. It could happen? A. It could happen. I am sure that many of them are prosecuted because there are laws on the statute covering the substitution.

Plaintiff's Exhibit 144

Q. In your opinion, as someone who has been in the drug industry for forty years, does the fact that a generic product is the identical color as a national brand product that might be prescribed by a physician, does the identity of color facilitate the ease with which a pharmacist could illegally substitute?

* * *

[57] Q. I gather, Mr. Field, that it is the position of Inwood that if you are enjoined from selling cyclandelate in blue and blue-red capsules, that you will be injured, is that correct? [58] A. Not really. It is a very small part of our business. It is also not one of the most profitable markets that we market today. I would say that we would not — we might be slightly affected, but not injured.

* * *

[60] Q. Does Inwood sell what it considers the generic equivalent of Papaverine? A. We do. It is not listed on this for the simple reason that the material is very difficult to obtain.

Q. What color is Papaverine — is it a capsule? A. It is a capsule.

Q. What color is it? [61] A. The shell of the capsule is brown and clear and the pellets or the seeds which are — they are white.

Q. Do you know of any other companies that sell — I guess the generic name is papaverine hydrochloride? A. That is the generic and the chemical name of the product.

Plaintiff's Exhibit 144

Q. Do you know of any others, other than Inwood, that offer papaverine hydrochloride capsules? A. There are others.

Q. Do you know what colors the other manufacturers use? A. The same colors.

Q. The same as Inwood's? A. With one, maybe, exception.

Q. What is the exception? A. I believe that U.S. Vitamin had or has.

Q. That is the only one that you know of? A. Yes.

Q. Do you know whether the U.S. Vitamin papaverine hydrochloride is the same dosage form as — A. The dosage is the same. However, they claim a different process which they call a microdialysis [62] process for producing the seeds for the long acting effect of the drug. That is the reason that they do that, to differeniate between the national brand product and their product.

[66] Q. Would the same statement be true, namely that the colors play no role if the purchaser that you were talking about was one of the intermediary purchasers, such as a pharmacist, for example? Does the color make a difference to the pharmacist? A. It certainly would.

Q. Why is that? A. Because of his past experience in handling drugs and expecting the generic color, which is widely used today, in all phases of pharmacy. If we were to institute a different color and put it into any city hospital, the confusion would be of a chaotic nature.

Plaintiff's Exhibit 144

Q. In a city hospital? A. I am saying where a lot of professional people would be handling products, generically, the generic equivalents to the brand name, there would be no end to the confusion and great apprehension on the patient's part who has taken, been using a different color.

[67] Q. What is the basis for this statement that you just made, what is the personal knowledge that you have of that conclusion? A. My vast experience in selling directly to hospitals, nursing homes, purchasing agents, throughout the United States.

Q. Have you ever discussed with them what a specific change in color would do? A. Absolutely.

Q. Have you ever discussed the cyclandelate color with any of these people?

* * *

A. We did receive objections from a few hospitals when Forest sold their Cyclanfor under a different color. We were told that all we are doing is creating confusion.

[68] Q. Who told you that? A. It was one of two hospitals.

* * *

Q. When did you stop — I am saying Forest — stop selling the Cyclanfor in the various shades of green? A. A few months ago.

Plaintiff's Exhibit 144

Q. 1978? A. Yes. When we found resistance to the product.

* * *

[69] Q. Have you ever had occasion to discuss with your Inwood customers the color? A. We have received requests from some of our distributors, if there was a similarity to the color so they would have no problem selling it into stores or hospitals or whatever accounts they are selling to. Naturally we answered in the affirmative that the color was generically equivalent in the chemical structure and in the color of the capsule, also size and shape.

* * *

[82] Q. Mr. Field, you testified that Forest Laboratories had discontinued marketing its Cyclanfor capsules in their shade of green coloration.

Would you tell us why Forest discontinued such manufacturing and sale? A. Because the color was not acceptable to the hospital trade.

Q. What were you advised as to the lack of acceptability of this color from the hospital trade? [83] A. Some hospitals said that it would require re-education of the personnel in the hospitals, such as the nurses and the doctors and the registered pharmacists, and it was too much confusion for them to handle since the drug was always produced in the basic blue and red and blue colors.

* * *

Plaintiff's Exhibit 144

[84] Q. Do you use the same size tablets as Ciba-Geigy in the manufacture of the generic products? A. We use the same size, shape and color.

* * *

[85] Q. In connection with the hydrochlorothiazide tablets, do the different sizes denote different dosage strengths? A. They do.

* * *

[88] Q. Mr. Field, you mentioned the drug Prednisolone before, and on your price list you list a license under patent number. Is that correct? A. That is correct.

* * *

Q. From whom are you licensed to manufacture [89] Prednisolone? A. I previously stated: The Schering Corporation.

Q. What color do you make the 5 milligram size in? A. Prednisolone, 5 milligram? Peach color.

Q. Is that the same color and size as is used by the Schering Corporation? A. It's the same size, shape and color as their brand name product called Meticortelone.

Q. I notice that you are also licensed to manufacture a product generically known as prednisone tablets and make that in a white 5-milligram tablet.

* * *

Plaintiff's Exhibit 144

A. The answer is the same. We produce this product in the same size, shape and color as the brand product called Meticortelone. That is manufactured by the Schering Corporation.

* * *

EXHIBIT 145 — JOINT DESIGNATED EXCERPTS OF DEPOSITION TESTIMONY OF DARBY, RUGBY AND SHERRY BY JOSEPH ASHKIN, MAY 9, 1978

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Civil No. 78-C

IVES LABORATORIES, INC.,

Plaintiff,

-against-

DARBY DRUG CO., INC., et al.,

Defendants.

Deposition of Defendants DARBY DRUG CO., INC.,; RUGBY LABORATORIES, INC.; and SHERRY PHARMACEUTICAL BY: JOSEPH ASHKIN * * * on Tuesday, May 9, 1978, at

* * *

[4] JOSEPH ASHKIN, residing at 1020 Seawane Drive, Hewlett Harbor. Long Island, New York, having been first duly sworn by the Notary Public, was examined and testified as follows:

* * *

Q. What is your position at Darby Drug? A. President.

Exhibit 145

Q. How long have you been president? A. About thirty years.

* * *

[5]Q. What is your business experience, Mr. Blackman? A. I am sorry, my name is Mr. Ashkin. Mr. Blackman was here previously. Let's keep the record straight.

My business experience, I have been in business for thirty years.

Q. You have been at Darby Drug for thirty years; is that correct? A. Yes. That is correct.

* * *

Q. What is your position at Rugby Laboratories, Inc.? A. President.

Q. How long have you been president of Rugby? A. Since its inception.

Q. When was that? A. About twenty years ago.

Q. Do you hold any positions at Sherry Pharmaceutical Co., Inc.? A. Yes.

* * *

[8] Q. Can you tell us for the record what the business of Darby Drug Company is, what does it do? A. Distribute pharmaceutical products.

Exhibit 145

Q. Has that always been its business? A. Yes.

Q. What is the business of Rugby Laboratories? A. To distribute pharmaceutical products.

* * *

[21] MS. DRISCOLL: A request was made in the request for production, also, for specimens of cyclandelate sold by Darby and Sherry. I ask you if you brought any of those with you?

MR. MARROW: My understanding is that Darby and Sherry sell cyclandelate in bottles with the name Rugby on the label.

MS. DRISCOLL: Is Mr. Marrow's understanding correct?

THE WITNESS: Yes.

[22] Q. In other words, are there no products sold by Sherry or Darby that have labels other than those shown on nine and ten? A. No.

Q. That is not right or that is right? A. It is right. The only label that we sell is Rugby and Ives, as well, as every other major manufacturer in the United States.

Q. Does Rugby sell Ives' Cyclospasmol? A. Rugby, no.

Q. Does Sherry sell Ives' Cyclospasmol? A. No.

Q. Does Darby? A. Yes.

Exhibit 145

Q. How long has Darby been selling Ives' Cyclospasmol? A. Ever since you brought it out.

Q. Did the other two companies ever sell Cyclospasmol? A. Yes. Wait a minute. I would like to correct that. Sherry does sell Cyclospasmol under the Ives name, I believe they do. I will check that in a second. (Pause) Yes. Sherry does sell Cyclospasmol.

* * *

[23] Q. Rugby does not? A. Rugby does not, no.

Q. Does Rugby sell only generic drugs? A. That is correct.

Q. Just so that we know for the record in connection with further questions, what is your understanding of what a generic drug is? A. A generic drug is that drug which is sold under its chemical name.

* * *

Q. Do you know of any practice in the drug trade of listing generic products in the left-hand column and national branded products in the right-hand column as a custom? In other words, the opposite of what you do, do you know of any custom in the trade of other distributors who reverse your order and — A. I don't understand that.

MR. MARROW: Is that a custom of putting [24] generics on the right and brand names on the left?

Exhibit 145

THE WITNESS: The position is strictly the choice of the person —

Q. Your answer to my question is there is a custom is no? A. It is strictly the choice of the person preparing the catalogue, and since there are only four positions that you can put it, top, bottom, left or right, it is bound to appear as a duplication, more than one will be in the left and more than one will be in the right and more than one will be on the top and more than one will be on the bottom, since more than four people are doing this.

Q. On Page 9 of Ashkin Exhibit 1, and referring to the box headed "Cyclandelate," is it the custom of Rugby in its catalogues to designate the color of the generic drug that it offers? I notice that it does give a color, but is that a custom of the company? A. There is no rule which states that it has to be done on every single product. It is done strictly as an informational procedure.

Q. Do you ordinarily give the color of the [25] generics, what you call the Rugby generic brand? A. Yes.

* * *

Q. Opening Ashkin Exhibit 9, do you know whether when products are sent out of Rugby, for example, or the other two companies under this label, there is a package insert usually in the product? A. I am not familiar with the manufacturing procedures on these products.

Q. When you send them out from Rugby or [26] Sherry or Darby under this label would a bottle such as Exhibit 9

ordinarily have an insert in it? A. Are you refer
cyclandelate itself or are you referring to all products?

Q. I am referring to Exhibit 9. A. Counsel, we b
products under a standard form, the Food and Drug g
is required by law. It is the obligation of the manufac
meet that law. Part of that law also states that once we b
seal on the package we have broken the integrity of the
and broken the law. We do not make the specificatio
what goes into the bottle or on the bottle. We buy a
package.

* * *

[28] Q. Is there any other way in which you could
it is a capsule distributed by Rugby; if you had not
remove it from Exhibit 9?

* * *

A. No.

* * *

[29] Q. If you had not seen me take it out of th
would you have known who distributed Exhibit 12?

Q. In connection with Exhibit 12, which is the blue
capsule of 400 milligram cyclandelate, is your answer
as with the plain blue 200 [30] milligram capsule — nan
it has always been sold by the three companies in t
without printing on the capsule? A. It has nev
imprinted.

Exhibit 145

* * *

[33] Q. Do you know if either company ever placed or attempted to place a bid with any government agency in order to sell cyclandelate? A. I would say no.

* * *

[34] Q. Referring to Rugby, is the generic cyclandelate sold by Rugby? Does it represent a small or a large portion of Rugby's business? A. Infinitesimal in the overall picture. No one product is that important.

Q. What about Sherry? A. The same way.

Q. And Darby? A. The same way.

* * *

Q. Referring to Ashkin Exhibit 7 for identification, which is a 1977 Sherry catalogue, specifically to page 3, what is the basis, to your knowledge, for the [35] statement made on page three that Sherry's drugs are "guaranteed to meet all Federal and state regulations"?

* * *

Q. Can you tell me what that means? It's in the catalogue, and I assume that you know what it means. That is your company.

MR. MARROW: Excuse me. There are two — A. Let's restrict ourselves to the question without the side issues of sarcasm. If you will repeat your question, I will try to answer it.

Exhibit 145

MS. DRISCOLL: Would you read back the question.

A. (Continuing) A simple statement of fact from the manufacturer, extending to my company a guarantee that any product he makes for me on my label meets the standard of quality of the Food and Drug Administration.

* * *

[40] Q. Insofar as Darby is concerned, do you know the basis for the statement that plaintiff knew of its acts for a "substantial period of time"?

* * *

Q. Are you aware that that statement was made on behalf of your three companies, sir? A. Yes.

Q. Do you know the basis for the statement that plaintiff knew of Darby's acts for a substantial period of time? A. Since it has been going on for a number of years.

Q. What has been going on? A. Our advertising of the product under the generic name, not only ourselves but many others.

* * *

[42] Q. Insofar as Rugby is concerned, when did Rugby first begin selling generic cyclandelate? A. Again the date is not specific in my mind.

Q. Is there any approximation? A. A few years. I imagine.

Exhibit 145

* * *

Q. Did you personally play any role in connection with the decision by Rugby to sell generic cyclandelate? A. The decision making is done in committee.

Q. Are you part of the committee? A. Yes.

Q. Or were you part of the committee? A. Yes.

* * *

[43] Q. Can you describe to the best of your recollection the circumstances surrounding Rugby's decision to sell generic cyclandelate? A. The product was offered to us by the manufacturer and we were advised by the manufacturer that this was a Paragraph 14 drug. It would be offered to us under [44] the standard form food and drug guarantee.

* * *

[46] Q. I show you a box and the heading of the box is the word S-p-a-s-m-o-l Spasmol. A. Yes.

Q. Did you play any part in the selection of that word? A. No. That was the name that was on the product when we got it from Sherry.

Q. When you say "on the product," do you mean on the actual labels? A. On the label.

* * *

Exhibit 145

[47] Q. Do you currently use the word "Spasmol" in any of your catalogues? A. No.

Q. When did you stop, if you know? A. When it was called to my attention by one of the clerks in inventory.

Q. Can you describe these circumstances and about when this happened? A. I don't recall the exact date. But it was pointed out that the word "Spasmol" was no longer relevant since [48] we were shipping it under the generic term only.

* * *

[52] Q. For what purpose are the references "comparable to Cyclospasmol" and "similar to Cyclospasmol" utilized in the two catalogues that I have just referred to?

* * *

A. Common trade practice.

Q. What trade? A. The pharmaceutical trade.

* * *

[54] MR. MARROW: Are the generic products [55] sold in the same colors?

THE WITNESS: Yes.

Q. Is there a reason for this, to your knowledge? A. That is the way the manufacturer supplies it to us.

Exhibit 145

Q. Have you ever purchased cyclandelate capsules in any colors other than blue, for 200 milligram — A. You asked that before.

Q. — and blue-red? A. We are going over the same ground again.

Q. I don't believe that I asked this question. Forgive me if I have, but I want to make sure that it is in the record.

Have you ever purchased those capsules in any colors other than blue or blue and red? A. No.

* * *

[67] Q. I ask you once again, because I don't believe that that was responsive to my specific question: For what purpose is the national brand Cyclospasmol listed in the chart on page two of the current Rugby catalogue, next to a column which says "cyclandelate," and the heading of that column is "Rugby Generic Brand"? Why is Cyclospasmol listed there, sir? A. It is listed there as a frame of reference.

* * *

[68] Q. Apart from this litigation, are you aware of any instances in which generic cyclandelate distributed by any of the three companies that you are testifying for has been illegally substituted for a prescription in which Cyclospasmol was called for in a pharmacy? A. Are you asking me if I know of anybody who did something illegal?

Q. In connection — I want to know if you know of any substitution other than what you may have learned about in

Exhibit 145

connection with this specific litigation. A. Only as to what I have learned here.

Q. Do you ever visit pharmacists, sir? A. No.

Q. Does someone in your organization have that as a responsibility? A. No.

Q. Are sales to pharmacists, therefore, pretty much handled in the Darby-Sherry organization by the distribution of catalogues? A. That is correct.

Q. Is there any other way in which those two [69] companies attempt to attract business from pharmacists? A. No.

* * *

[74] Q. In your experience in the drug industry, did you ever have occasion to visit pharmacies in the line of your employment? A. No.

Q. Mr. Ashkin, I have not yet received, but it is not due until next Monday, reply papers in connection with the motion now pending in court in this case.

I am somewhat at a disadvantage, but I don't want to have to call you back after I receive the papers.

Is it the contention of Rugby, Darby and Sherry that they will be injured if they are enjoined from selling cyclandelate products in the colors blue and blue-red? A. Yes.

Exhibit 145

Q. In what way, would you tell us, do you claim that the companies would be injured? A. You will be forcing us to market what we call an inferior product. We will be destroying the quality, the safety and the effectiveness, putting those in jeopardy.

Q. In other words, you are testifying that [75] a change in color would destroy the quality, safety and effectiveness? A. Right.

Q. And why is that, sir? A. You would be forcing us to market an inferior product because immediately this product was given to a pharmacist, he would question it as to whether it is the product so-labeled on the face of the bottle. You would also throw a severe amount of doubt into the patient's mind as to whether it is cyclandelate. Then the effect of that would be that the patient would doubt the effectiveness of the product. The integrity of the product all the way is destroyed.

Q. What is the basis for your conclusion as to what pharmacists would do if you sent them cyclandelate in a different color? You previously testified that you never visited pharmacies in your employment. What is the basis for that assumption on your part? A. I do believe that the telephone is still in existence. Every time the pharmacist will receive a capsule that is even slightly off color, as received from the manufacturer, the phone will ring and he will demand to know is the product what it is supposed to be.

[76] Q. Has that happened at any of the three companies? A. Yes.

Q. Do your people have instructions as to what to tell pharmacists should this occur? A. Yes.

Exhibit 145

Q. What are those instructions? A. To reassure them that while the shade may be slightly different, it is the same and that to return it to us immediately so that we can return it to the manufacturer.

Q. How often, if you know, would your three companies receive communications like this from the phramacists? [sic] A. We keep no scorecard on that.

Q. Does it happen often, seldom? A. In my years in the field I have had it happen numerous times.

Q. What do you mean by your years in the field? A. I have said that I have been in this field 35 years.

* * *

[77] Q. Getting back to your previous testimony, what is the basis for your testimony that a change in color could create doubt in a patient? A. Well, it is twofold. First is experience in the field, speaking to pharmacists who, whenever they receive a tablet in which the shading is not particularly correct, as I said, they feel that there are many variations of a particular color and shadings, I should say, they will immediately call us and ask us if the product is what it is supposed to be.

Q. My question related to patients. [78] A. Their anxiety, as they explained it to us, stems from the fact that they will not put something into the patient's hands which is not the exact same color, size and shape. The second part of the answer is that, it is based upon my own personal experience as to how I would feel if I received something from the pharmacist which was other than in a standard color and shape, I would immediately call him and ask him if he had sent the right thing.

Exhibit 145

Q. You would call? A. Correct.

* * *

Q. Have any of the three companies had occasion to change, during the period of distributing a generic drug, the color of the drug in your experience with those companies? A. Not to my knowledge.

Q. So, you have never in the company had firsthand knowledge of what the consequences might be; is that correct? A. Not within our company, but in general trade practice, yes.

Q. What is the basis of your statement as to [79] the general trade practice, do you know of specific instances where colors have been changed by other companies or is this more of a general statement? A. In the instance of some of the major companies who have tried to create a branded generic with a new color on a particular product, the reception of the product at the pharmacists' level has been so poor that in the future products which they came out with, they did match the color.

Q. Can you tell me specifically what product you are referring to or products that you are referring to? A. Quite easily for you to determine that by looking at certain products in the Lederle generic line. You will note that in their initial presentations they attempted to create a so-called high priced generic specialty, even though their products were purchased in the exact same place that I bought them, they were being marketed at three or four hundred per cent over and above my price and that the color fell flat. It was not accepted by either the

Exhibit 145

pharmacist or the general public, the layman who would receive the end product; that the products that they are currently bringing out are in the color, in the size, and in the shape —

[80] Q. Of what, the national brand marketed? A. Of the national brand.

* * *

Q. You mean quite a few are doing what you do, which is copy the brand name leader and color? A. In color, size and shape.

* * *

[81] Q. You are saying that you think it is important that, for example, cyclandelate, I gather that this is your testimony, should be sold in the same color by everyone; is that what your contention is? A. No. It is my belief that all generics should be sold in the same color.

* * *

Q. Do you know of any generic products currently on the market in a color that — of the same chemical composition but which are sold in different colors? [82] A. Yes.

Q. Which ones are you aware of? A. No specific one. In particular when it is generally created in another color, to justify a substantial increase in the generic price.

* * *

Exhibit 145

Q. In your opinion as someone who has been in the drug field for many years, do you believe that if a pharmacist desires illegally to substitute a generic when a brand name is called for on a prescription, that it would be easier for him to get away with it if the color of the generic is the same as the brand name product color? A. That doesn't make —

MR. MARROW: I would stipulate that it is.

Q. Fine.

* * *

Do you know whether there are [83] pharmacists who prefer to deal in brand name products as opposed to generics? A. I imagine that there are. However, I would point out to you that there are certain states now and that the public trend is toward generic formularies which are now in some 40 states, may of which stipulate that the pharmacist has no choice and must supply the lowest available generic product acceptable for reimbursement on third-party payments.

Q. Do you know if cyclandelate is in any formularies? A. I don't know of any one particular product which is in any particular formulary since each formulary covers the gamut of the red book which runs several hundred pages as a listing of products.

* * *

Q. Do you know from your experience in the drug trade again whether there are physicians who prefer to prescribe a brand name product as opposed to [84] a generic product? A. That you can stipulate to.

Exhibit 145

Q. In other words, yes? A. Of course.

Q. Are there also patients who prefer to receive such a brand name product as opposed to a generic? A. I would assume that there are.

* * *

Q. Referring to Ashkin Exhibits 9 and 10, which are containers for 100 capsules of 200 or 400 mg. cyclandelate capsules, do the three companies distribute cyclandelate in any other quantities? A. Not to my knowledge.

Q. In other words, they are all the 100 size? A. Maybe 500. I don't know. I would have to check that.

Q. Would that show in your catalogue? A. Yes. It would be in there.

* * *

A. Bottles of 500 on the 400 mg. Hundreds, 500's and thousands.

[85] Q. In other words, they are sold in three sizes, 100, 500 and 1000; is that correct? A. Yes. That is correct.

* * *

Q. If a pharmacist purchased in quantities of 1,000, so that he had a large bottle of 1,000 cyclandelate capsules, can you describe for us from your general experience in the trade what the pharmacist would do with that bottle? Does he use the large

Exhibit 145

bottle [86] and pour out capsules from time to time to fill a small bottle for a prescription? A. That is correct.

Q. Is the same true of the 500 size? A. Yes.

* * *

Can you tell us for the record what you mean by the statement that "Insofar as color is concerned that the color is a functional feature of the products"? [87] A. Yes.

Q. What does that mean? A. The functional features that both the pharmacist and the ultimate consumer, the patient, identify the product by its color. Given another color, they would question the integrity of the product.

Furthermore, that would put us in the class of offering them an inferior product if we were to tamper with the color.

Q. When Rugby and Darby decided to sell cyclandelate products, did you believe at that time, and we unfortunately don't have a date — did you believe at that time that the color of Cyclospasmol capsules were functional? A. We didn't question that feature. The product was offered to us by the manufacturers in the specific color. The manufacturers being very well aware of the same information that I just gave to you here. It was never offered in any other color than that.

* * *

[88] Q. How would one, in your opinion, since this is your answer, come to recognize color as a functional feature, is that through long use? How does that come about? A. It comes about that the pharmacist has seen it in one particular color for

Exhibit 145

a number of years, that it is often not only by myself
generic [89] people in the same color as well as
Company.

Q. In other words, this is not an instantaneous t
first time you sell it people don't recognize it as being fu
is that correct? This only comes about after
years? A. Having received one prescription, the sec
comes to hand and it is a different color, immediately
question of whether a person is becoming a first time u
product or has been a long time user of the product.

[90] Q. But, a pharmacist, I believe you testified,
recognition. A. He recognizes —

Q. Over some years. A. He recognizes that Cycl
comes in this particular color.

* * *

[93] Q. Turning to page 5 of the answer, p
23: What is the basis for a claim that any compa
defendants may have made with respect to cyclandel
Cyclospasmol are accurate? A. What is the basis fo

Q. Yes. A. Various chemical tests that we have
the two products.

Q. Who is "we"? A. Meaning the manufac
course. This is the manufacturer.

Q. Not the three here.

Exhibit 145

[94] Q. You stated earlier today that the sales of cyclandelate by the various three companies are infinitesimal, I believe your words were.

Has that always been true over the course of time that the cyclandelate has been sold, to your knowledge? A. I believe that the word "infinitesimal" in the context that I used it, was not in the same context that you used it. You must understand that we distribute some 25 or 23,000 various products.

Q. Who is "we"? The three? A. Darby and the three others, and the other two companies. They distribute that many products. There is no one product which can be considered as representing an abnormal part of our business.

What is involved here is a principle for which we are not prepared to give up.

Q. I believe that we have a question pending. A. It was nonexistent at one point until we began to sell it.

Q. It's always been a small part of the business? A. It represents a small part, yes. But it is a [95] part.

* * *

[97] Q. I notice in the Darby catalogue that the representation is made that the generic cyclandelate is similar to Cyclospasmol, and in the Sherry catalogue that Spasmol is comparable to Cyclospasmol. But, I find no such specific reference in the Rugby catalogue. Was that intentional? A. No. Strictly editorial.

Exhibit 145

Q. It was not the result of a conscious corporate decision? A. Correct.

Q. Do you know whether any Rugby catalogues in the past have ever specifically made the claim of similarity or comparability of cyclandelate to Cyclospasmol? A. I assume so.

Q. In the current Darby catalogue at Page 21 under the reference to cyclandelate, there is an indication of the color of the 200 milligram capsule, but there is no indication of the color of the 400 milligram capsule. [98] Is that once again — A. Strictly editorial. A question of space available.

* * *

Q. Why is color mentioned at all in your catalogues?

MR. MARROW: That was asked and answered. A. I believe that that was asked earlier and was answered.

Q. Why is it mentioned in catalogues specifically that go to physicians as opposed to wholesalers or pharmacists? A. No particular reason. Strictly editorial. You asked why it is in one and not in the other two, but it is [99] in the other.

Q. No. I had a slightly different reason. The question was directed to, what is the reason, if any, why you would list color in a physician's catalogue? A. To assist him to understand the product. It is an editorial choice.

* * *

DEFENDANT'S EXHIBIT 12 (INWOOD) — LIST OF COMPANIES MARKETING CYCLANDELATE PRODUCTS

COMPANIES MARKETING CYCLANDELATE PRODUCTS

Cumberland Pharmacol Co., Inc.
327 Baltimore Avenue Box 88
Cumberland, MD 21502

200mg. Capsules

Dixon-Shame, Inc.
1518-22 Seller St.
Philadelphia, PA 19124

200mg. Tablets

Generix Drug Corporation
P.O. Box 1967
Hollywood, PL 33020

200mg. Capsules

Lannett Co., Inc.
900 State Road
Philadelphia, PA 19136

200mg. Capsules

Defendant's Exhibit 12 (Inwood)

Midway Medical Co.
103 Samson Street
Glasgov, KS 42141

200mg. Capsules

H.L. Moore Drug Exchange, Inc.
370 John Downey Drive
New Britain, CN 06050

200mg. Capsules T.R.

400mg. Capsules T.R.C.

Paramount Surgical Supply Co.
164 Union Street
Northvale, NJ 07647

200mg. Capsules

400mg. Capsules

Pharmecon, Inc.
23550 Haggerty Road
Framington, MI 48024

200mg. Capsules

Defendant's Exhibit 12 (Inwood)

Premo Pharmaceutical Labs, Inc.
111 Leuning Street
South Hackensack, NJ

200mg. Capsules

Rugby Laboratories
16 Nassan Avenue
Rockeville Centre, NY 11570

200mg. Capsules

400mg. Capsules

Spencer-Mead, Inc.
270 W Merrick Rd
Valley Stream, NY 11582

200mg. Capsules

400mg Capsules

West-Ward Inc.
745 Eagle Avenue
Bronx, NY 10456

200mg. Capsules

Defendant's Exhibit 12 (Inwood)

Wolins Pharmacal Corp.
75 Marcus Drive
Melville, NY 11746

200mg. Capsules

DEFENDANT'S EXHIBIT 63 (PREMO) — JOINT DESIGNATED EXCERPTS OF DEPOSITION TESTIMONY OF RUDOLPH F. PRINZ, JANUARY 14, 1980

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CIVIL ACTION NO. 78-372

IVES LABORATORIES, INC.

Plaintiff

vs.

DARBY DRUG CO., INC., et al.

Defendants

DEPOSITION OF RUDOLPH F. PRINZ

* * *

[3] Q. Would you state your name and spell it for the record, please? A. Rudolph F. Prinz. R-U-D-O-L-P-H, initial F., P-R-I-N-Z.

Q. Mr. Prinz, where do you reside? A. 463 Hogarth Avenue, in Niles.

Q. That's Niles, Ohio? A. Niles, Ohio — excuse me.

Q. What is your occupation? A. Pharmacist.

Q. Could you briefly sketch your educational background for me? A. Professional education?

Defendant's Exhibit 63 (Premo)

Q. Yes. A. Attended Ohio Northern University, received a Bachelor of Science in Pharmacy in the years 1953. After a short interim in the service, attended both Youngstown State and Hiram University for furthering courses [4] in biology, physiology and advanced chemistry.

Q. Are you licensed to practice pharmacy in the State of Ohio? A. Yes, I am.

Q. And other states? A. I have not reciprocated my license.

Q. Are you appearing today at this deposition on behalf of Calvin's Pharmacy? A. I believe so. To the best of my knowledge, I am.

Q. What is your relationship to Calvin's? A. I'm the owner.

* * *

[16] MR. RAUBICHECK: Why don't we mark this a group exhibit? I would like the reporter to mark as Plaintiff's Group Exhibit 7, five of the copies of Cyclospasmol prescriptions which were produced by Mr. Prinz. The sixth one which was for Cyclospasmol tablets, 100 milligrams, I'm going to return to Mr. Prinz because the 100 milligram dosage form is not the subject of this action.

* * *

Q. Now, just so that I understand it correctly, Mr. Prinz, could you identify again Plaintiff's 7? A. You want them one by one of just —

Defendant's Exhibit 63 (Premo)

Q. Just in general what they constitute. A. This is a copy of a written prescription by a physician for a patient Charles Jacobs, dated —

[17] Q. In other words, just in general what do these documents constitute? A. These are copies of prescriptions that have been filled at Calvin's Pharmacy that have been researched, pulled from the file, copies made and presented today.

Q. Now, do these copies of prescriptions constitute copies of all prescriptions within your records for patients who have had prescriptions filled for Cyclospasmol or are they representative? A. These are the total prescriptions that we are now actively filling and they go back, some of them, as far as two or theree years. To the best of our ability, those that we were able to produce. To go through prescriptions one by one for hours and hours, it's almost an impossible situation.

Q. These are your current customers? A. These are the current customers on Cyclospasmol.

* * *

[23] Q. Mr. Prinz, Plaintiff's Exhibit 10, I would ask you if you could identify that, please.

MR. COBRIN: I think you ought to identify on the record what that is, Charlie.

MR. RAUBICHECK: It's an item that appears to be a [24] bottle, produced by the witness pursuant to Item 3 of the Schedule A, and I'm asking the witness to identify

Defendant's Exhibit 63 (Premo)

it. A. Exhibit 10 represents a bottle of Cyclandelate capsules 400 milligrams, manufactured by Pharmadyne Laboratories, purchased from Bioline Laboratories by us on October 19, 1979.

Q. Bioline? A. Yes, Bioline Laboratories in New York.

* * *

Q. Mr. Prinz, does Calvin's, other than Plaintiff's 10, have any other Cyclandelate capsules in stock which it purchased from Bioline which were made by Pharmadyne? A. Yes, I have another bottle of a full 500 on my shelf.

* * *

[25] Q. Okay, the next bottle, Plaintiff's Exhibit 11, I'll ask Mr. Prinz to identify it. A. Exhibit 11 is a partially filled bottle labeled "Cyclospasmol 200 milligrams capsules" cyclandelate, purchased by Calvin's Pharmacy from Scherer-Thompson Inc., Auburn Heights, Michigan, manufactured by Cord Laboratories, Bloomfield, Colorado.

* * *

[28] Q. The generic cyclandelate that you purchased from distributors other than Bioline and Scherer-Thompson, was that bought in 200 and 400 milligram dosage forms? A. Yes sir.

Q. What were the colors of the 400 milligram dosage form that you purchased other than from Scherer-Thompson and Bioline? A. They were all the same color.

Q. What colors were those? A. A red and a blue.

Defendant's Exhibit 63 (Premo)

Q. And how about the 200 milligram? A. Totally light blue.

* * *

[29] MR. RAUBICHECK: Well, I would like to mark as Plaintiff's Exhibit 12, two items which have been produced by Mr. Prinz.

[30] (Plaintiff's Exhibit 12 Marked for Identification)

Q. I'll ask Mr. Prinz, again, if you could identify those. A. Yes. These are empty samples of blister packs used in a packaging machine within our pharmacy.

Q. Now, does Calvin's use blister packs similar to those — I should say identical to those in Plaintiff's Group Exhibit 12, to package cyclandelate? A. At the present time we do.

Q. Have you brought with you any blister packs which contain cyclandelate in them? A. Yes.

MR. RAUBICHECK: I would like the reporter to mark these two items which have just been handed to me by Mr. Prinz as 13A which would be the 200 milligram and 13B which would be the 400 milligram.

(Plaintiff's Exhibits 13A and 13B Marked for Identification)

Q. Could you identify Plaintiff's Exhibit 13A for the record? A. Yes. This is a unit dose package prepared at Calvin's Pharmacy that contains one dose of cyclandelate 200 milligrams.

Defendant's Exhibit 63 (Premo)

[31] Q. And could you identify Plaintiff's 13B for the record? A. 13B is a unit dose strip pack prepared at Calvin's Pharmacy of one dose of cyclandelate 400 milligram.

Q. Now, Plaintiff's Exhibits 12, 13A and 13B, you have described as blister — as unit dose packs? A. That's right.

• • •

[32] Q. Mr. Prinz, I show you an item which is marked as Plaintiff's 14 and I would ask you if you have ever seen it or anything like it before. A. Is this what you are referring to as a blister pack?. Q. Yes. A. In your terminology of a blister pack rather than a unit dose pack?.

Q. Right. If you have seen it or anything like it, could you describe and identify it? A. That's what I was planning on doing. Exhibit 14 represents a so-called blister pack prepared by Calvin's Drug Store, July 9, 1979. This particular package or packaging is used exclusively in an emergency drug cupboard. It so designates that it contains Cyclospasmol with a capital letter "G", designating the generic equivalent. It's 400 milligrams, the lot number of the bottle taken from, and the expiration of the dosage form enclosed.

Q. Was the packaging of the capsule Plaintiff's Exhibit 14 prepared by Calvin's? A. Yes. It has our name on it.

• • •

[33] Q. So that the cyclandelate Calvin's packages in the package in Plaintiff's 14 is used for emergency administration only? A. Yes, sir.

Defendant's Exhibit 63 (Premo)

* * *

[40] Q. Mr. Prinz, I show you a document marked as Plaintiff's 17 and ask you if you could identify that. A. It is a catalogue put out by Spencer-Mead from Valley Stream, New York. This is their complete catalogue of drugs, pharmaceuticals, and supplies available.

Q. And I call you attention to Page 5 of Plaintiff's 17 and I ask you if the drug cyclandelate is listed on Page 5. A. Yes, it is listed on Page 5 — cyclandelate.

Q. Have you ever purchased cyclandelate from Spencer-Mead pursuant to that catalogue? A. I would assume I have. I have no way to say I haven't.

Q. Do you know who manufactures the cyclandelate distributed by Spencer-Mead? A. I don't know, but if I ordered a bottle — they are a national distributor and it would have to be labeled by law on the side of the package as to who manufactured it for their distribution.

(Plaintiff's Exhibit 18 Marked for Identification)

Q. The next item is a document marked as Plaintiff's 18 and [41] I'll ask Mr. Prinz if he can identify it. A. This is a price list for drugs and over-the-counter specialties put out by Scherer-Thompson, Auburn Heights, Michigan.

Q. And on Page 2 of Plaintiff's 18, is the drug cyclandelate listed? A. Yes, on Page 2 the drug cyclandelate is listed.

Defendant's Exhibit 63 (Premo)

Q. Did Calvin's purchase the cyclandelate ca
Plaintiff's Exhibit 11 pursuant to the Scherer-T
catalogue which has been marked as Plaintiff's 18? A
bottle designates it's from Scherer-Thompson, the
ordered through them, yes sir.

(Plaintiff's Exhibit 19 Marked for Identificatio

Q. The next item is Plaintiff's Exhibit 19 and I'll
you would identify that, please. A. Plaintiff's 19 is a
of drugs available from Diacin Pharmaceuticals and G
Ferndale, Michigan.

Q. And on Page 6 of Plaintiff's 19, is the drug cy
listed? [42] A. Yes. On Page 6 cyclandelate is listed

Q. Has Calvin's ever purchased any cyclandel
Diacin? A. No. sir.

(Plaintiff's Exhibit 20 Marked for Identificatio

Q. I have asked the reporter to mark the next do
20 and I'll ask Mr. Prinz to identify it. A. Exhib
catalogue put out by Generix Drug Corporation, H
Florida.

Q. On Page 5 of Plaintiff's Exhibit 20 is cyclandel
the drugs listed? A. Yes, on Page 5 of Exhibit 20
cyclandelate is listed.

Q. Has Calvin's ever purchased any cyclande
Generix? A. No.

Defendant's Exhibit 63 (Premo)

Q. Do you know which company makes the cyclandelate distributed by Generix? A. As repeated before, these are distributors. If they did not manufacture the product, it would be labeled or marked by law on the label.

Q. Now, you testified that Plaintiff's Exhibits 17 through 20 are representatives of —

* * *

[43] (Plaintiff's Exhibit 21 Marked for Identification)

A. Exhibit 21 is a generic price list and order form from Michigan Pharmacal Corporation, Ferndale, Michigan.

Q. On the bottom of the first page of Plaintiff's 21 there is a circle around a notation. Does that notation indicate that Michigan Pharmacal offers cycylandelate? A. Yes, on the header page this indicates cyclandelate is available.

Q. And has Calvin's ever purchased generic cyclandelate from Pharmacal? A. If I had it would be some time ago.

Q. Do you recall if you had purchased it who made the generic cyclandelate distributed by Michigan Pharmacal? A. No, I don't.

Q. You testified a few moments ago that Exhibits 17 through 21 are representative catalogues which Calvin's has within its possession which contain reference to generic cyclandelate or Cyclospasmol. [44] A. Right.

* * *

Defendant's Exhibit 63 (Premo)

[45] Q. Okay, with respect to the prescriptions, the five prescriptions in Plaintiff's Group Exhibit 7, were those prescriptions filled by you personally? A. Originally or refilled?

Q. Both, if you know. A. Three were filled by me originally, two were not.

Q. Are these all refills? A. Those are original orders. I did not photostate the backs because there is no way it would correlate the front. Each time a prescription is refilled it is dated, stamped, and initialed by the pharmacist that filled it.

Q. Do you know for each of these prescriptions in Plaintiff's Exhibit 7 whether for any of those prescriptions a [46] generic dosage form of cyclandelate was dispensed as opposed to Cyclospasmol? A. Yes.

Q. An what is your answer? Was a generic dispensed for each of those? A. Not each.

Q. For which were Cyclospasmol dispensed and for which were generic cyclandelate dispensed? A. Generics were dispensed on each except this one written in the doctor's handwriting "DAW".

* * *

[52] Q. Okay, to your knowledge does the dispensed as written requirement that applies to prescriptions which are filled in your pharmacy also applied to orders that would be filled from physicians in nursing homes? A. It does not. Under the Ohio Revised Code, hospitals [53] nursing homes, and

Defendant's Exhibit 63 (Premo)

convalescent centers are exempt unless the physician writes "DAW".

* * *

Q. Could you explain what you mean by "exempt" in your last statement? A. Okay, what I mean by exempt, is that if you came to me with a prescription for Cyclospasmol, the Ohio Revised Code states that if I have a generic available at a lesser cost, then I'll offer it to you — not mandatory, but it's a three-part situation. In other words, I offer it to you telling you that I have the generic available for the order that your doctor has written. That's in lieu of the doctor not writing — and it has to be written in Ohio — "DAW" or dispense as written, in his handwriting. No blocks or checks or anything else. I then, if you are interested, then I'll price for you the prescription as far as the name brand and I'll price for you the prescription as of the generic, keeping [54] in mind that the differential in the price, your acquisition price or cost price of the prescription, must be at least the cost differential of the two products to me. Then you make the decision whether you want the prescription filled generically or not. If you so desire or designate you want the generic used, then we fill it with the generic, mark the prescription that the generic has been used, and that is your price and when I'm talking about the exemption for hospitals, nursing homes, and convalescent centers, I don't have to go to each patient and say, "Do you want this filled generically." All I have to do is pass on to them the cost between the generic and the name brand.

* * *

Defendant's Exhibit 63 (Premo)

Q. Turning your attention for a moment to Plaintiff's Exhibit 13A, can you tell from looking at that exhibit whether [55] the capsule contained in the package in Plaintiff's 13A is Cyclospasmol 200 milligrams? A. You mean the branded name Cyclospasmol?

Q. No, I mean Cyclospasmol — right. Q. This is cyclandelate.

Q. So that the capsule in Plaintiff's 13A is not Cyclospasmol, the brand name product or drug? A. It's not the branded name drug. It's the generic equivalent of the branded name drug, which is cyclandelate.

Q. How do you know that? A. Because it does not have the identification marks of Ives on it.

Q. What are the Ives identification marks for Cyclospasmol 200 milligrams? A. I have to open one of theses. They are all the same.

MR. RAUBICHECK: Let the record show the witness is opening Plaintiff's Exhibit 9.

A. Printed on a two-part light blue capsule in script would be written the word "Ives". On the other part of the capsule would be their product identification number. The capsule I'm holding is indicated as [56] 4124, which under the N.D.C. No. 4124 would be the identification of Cyclospasmol 200 milligram, manufactured and sold by Ives.

MR. COBRIN: So the record is complete, I think I would want to note that the witness has taken a capsule out of the

Plaintiff's exhibit and held it in his hand and looked at it while he answered the question.

THE WITNESS: Right.

* * *

Q. Okay, turning your attention again to Plaintiff's Exhibit 13A, can you tell from looking at that exhibit if there are any marks on the capsule in Plaintiff's Exhibit 13A? A. Yes, I can rotate it. There are no identifying marks at all.

Q. Turning your attention to Plaintiff's Exhibit 13B, looking at Plaintiff's 13B, can you tell me whether the drug, I mean the capsule in 13B is Ives's Cyclospasmol? A. No. This is a capsule of cyclandelate 400 milligram.

[57] MR. RAUBICHECK: And let the record reflect that the witness has opened Plaintiff's Exhibit 8 and is holding a capsule from Plaintiff's Exhibit 8 in his hand.

* * *

Q. Plaintiff's Exhibit 14 — will you take a look at it, Mr. Prinz, and tell me whether or not that capsule is Cyclospasmol? A. This is cyclandelate both by identification and the labeling on the package which indicates Cyclospasmol "G", which represents the generic or cyclandelate.

Q. Are there any markings on the capsule in Plaintiff's 14? A. No sir.

[58] Q. Turning to Plaintiff's Exhibit 15, by looking at it can you tell whether the capsule in Plaintiff's 15 is Ives's

Defendant's Exhibit 63 (Premo)

Cyclospasmol? A. The capsule in Exhibit 15 is cyclandelate, as marked on the label.

Q. It is a generic version of cyclandelate? A. It is cyclandelate.

Q. It is not the Ives product? A. It's not Ives name branded Cyclospasmol.

Q. Are there any markings — A. There are no identifying markings on Plaintiff's 15.

Q. If you would turn and take a look for a moment at Plaintiff's 13A, 13B, and 14 and 15, Mr. Prinz, and you look on the back of each of the packages in those exhibits, do you know why the name Cyclospasmol is on the packages of each of those exhibits?.A. Why it is?

Q. Uh huh. A. Because it's a common identifying name for the chemical drug cyclandelate.

Q. Could you explain what you mean by "common identifying [59] name"? A. It's a name that probably most people would be familiar with — both professional and laymen — as to the medication so enclosed in the capsule.

Q. You testified a few minutes ago, Mr. Prinz, that Calvin's has not filled a prescription within the last two years for generic cyclandelate which was written for cyclandelate as opposed to Cyclospasmol. A. I said to the best of my knowledge I haven't.

Q. To the best of your knowledge. If that is the case, what is the basis for your statement that lay persons and medical persons would associate the drug cyclandelate with the name

Defendant's Exhibit 63 (Premo)

Cyclospasmol? A. I would assume that originally or whenever Ives' Laboratory received an authorization from the Food and Drug Administration to market cyclandelate under their branded trade name of Cyclospasmol, and this product was detailed and presented to the medical profession and made available through pharmacies to the patients when the doctors ordered it.

Q. When Calvin's packaged the capsules in Plaintiff's [60] Exhibits 13A, 13B, 14 and 15, were you or anyone else at Calvin's mistaken that the generic product which was being packaged was Cyclospasmol? A. No.

Q. You were not confused as to the identify? A. No.

Q. Who caused the name Cyclospasmol to be imprinted on Plaintiff's 13 through 15? A. I did.

Q. Were you or anyone else at Calvin's told by anyone that it was permissible to package generic cyclandelate labeled Cyclospasmol? A. My interpretation as far as the Ohio Revised Code, as far as packaging and labeling as indicated — and I don't know which Federal it is — but where Ives uses their branded trade name such as Cyclospasmol in identifying their product they have to print in half-size print underneath the generic equivalent or the generic name of the product they are identifying with their name and their name only.

MR. COBRIN: Would you please read that last [61] question and answer?

(The last question and answer was read by the reporter)

Defendant's Exhibit 63 (Premo)

Q. Do you construe that requirement that you have just testified about to apply to distributors or sellers of cyclandelate other than Ives? A. My interpretation of the law, when I put this package out —

MR. COBRIN: Can you identify the package you're referring to? A. Yes, Exhibit 13B. When Exhibit 13B is packaged by me, it's packaged with the name "cyclandelate" in one size print and with the strnegth [sic] of the dosage and the dosage size — 400 milligrams. Then in a smaller half-size print the common name, or Cyclospasmol.

Q. Now, you say that to your understanding that's permitted under Ohio law? A. When I called the Ohio State Board of Pharmacy — as you can see, package 13B and package 15 both contain doses of cyclandelate 400 milligrams, and there are two different sizes of strip. One is a film and one is an aluminum foil seal. We called the Ohio State [62] Board of Pharmacy and talked to their legal counsel and this was the recommendation they gave us at that time pursuant to the fact that there has never been any definite law or regulation passed, etc. These are recommendations by my local drug inspector who happened to come in and made the recommendation to me before we made any changes with the machine as far as packaging goes. We called the Board of Pharmacy for their ruling on it and this is the recommendation they passed on to me.

Q. Did you personally make that phone call? A. Yes, sir.

Q. And do you remember who you talked to? A. I talked to Frank Wickham, who is the executive secretary and when I explained what my query was about he transferred my call to the legal counsel in their office.

Defendant's Exhibit 63 (Premo)

Q. Do you remember his name? A. I don't recall his name.

Q. And he was with the Board of Pharmacy? A. Yes sir.

[63] Q. Of the State of Ohio? A. Yes sir.

Q. Did you ever speak to anybody at the Ohio Attorney General's Office on this matter? A. No sir.

Q. What specifically did this legal counsel tell you? A. He told me that this is — at the present time this is what some of the pharmacies that are re-packaging are doing, and he recommended if I were making a change that I would be within the guidelines right now until they make final —

MR. COBRIN: Can we note for the record the witness is pointing to which exhibits?

MR. RAUBICHECK: 13A, 13B, 14, and 15.

THE WITNESS: They are all identical.

MS. FRIEDMAN: They are not all identical.

THE WITNESS: The labeling is identical.

MS. FRIEDMAN: Not on 14.

THE WITNESS: 13A, 13B, and 15.

Q. You mentioned an inspector. To whom were you referring when you made that statement? [64] A. That would be the district pharmacy inspector of the Board of Pharmacy,

Defendant's Exhibit 63 (Premo)

representative of the Board of Pharmacy who comes in routinely.

Q. Did you speak with him after you talked to the legal counsel? A. Prior to.

Q. Prior to? A. Right.

Q. And what was the essence of your conversation with him about the labeling of your packages of cyclandelate? A. Well, at the time we were using the name — which they have all been exhausted from our inventory — we were using the name Cyclospasmol with a capital "G" to designate a generic form of Cyclospasmol, or cyclandelate, and he looked at the package and stated that we should make modifications, etc., etc. That's when we instituted the phone call, found out, and had these new tags made up.

Q. Did both the Board of Pharmacy inspector and the legal counsel indicate or state to you that it was permissible under Ohio law to use the name [65] Cyclospasmol on your packaging? A. My interpretation of the Ohio Revised Code said I may label a common name so as not to confuse the public.

Q. You say your interpretation. Did they tell you that, or — A. It's my interpretation.

Q. Do you recall the name of the inspector? A. Virgil Manley.

Q. Do you recall approximately when you spoke with the Board of Pharmacy inspector about this matter? A. It was before we moved in the new store, so it would have to be in September sometime.

Defendant's Exhibit 63 (Premo)

Q. September of 1979? A. Right.

Q. And when did you talk to the Ohio Board of Pharmacy legal counsel about this matter? A. It was shortly after we moved.

Q. And when did you move? A. October 15th.

Q. Of 1979? A. Right.

* * *

[81] Q. Mr. Prinz, with respect to Exhibits 13A, 13B, 14, and 15, did the labeling which you placed on these exhibits — was the language that you put on them influenced by the color of the capsules you put in the package? A. Yes, sir.

Q. Do you think it's desirable to have cyclandelate in the same appearance as Cyclospasmol?

MR. RAUBICHECK: Object to the question.

MR. COBRIN: You can answer the question, Mr. Prinz. A. My own personal belief is that when generics or generic equivalents are on the market for a branded name drug entity, that it does not allow for any confusion on the part of the patient when they take the medication. The basic law in the State of Ohio was passed and put together for the one sole purpose of saving money or saving dollars for prescriptions filled for patients, and in working with nursing homes we were working primarily with a geriatric patient who has taken a particular medication for [82] a period of years, he is familiar not with the medication or what it does, but with a blue capsule

Defendant's Exhibit 63 (Premo)

or orange pill with a red liquid, etc., etc. To make an abrupt change would then in the mind of the patient present some problem or might present some problem.

MR. RAUBICHECK: The Plaintiff objects to the question. The Plaintiff also objects to the testimony on the grounds of improper foundation. There has been no testimony establishing Mr. Prinz as an expert in the field of prescribing drugs or as an expert in interpreting the statutes of Ohio insofar as they pertain to dispensing prescription drugs.

Q. Mr. Prinz, how long have you been a registered pharmacist in the State of Ohio? A. Twenty-seven years.

Q. And I take it when you gave that last answer, were you answering based on your 27 years of experience in dispensing drugs? A. Yes, sir.

Q. With respect to patients who walk into your store and get cyclandelate, the generic version as distinct from [83] the Cyclospasmol, in every version is the generic cheaper or more expensive or what? A. It's always less expensive.

Q. When you stock generic drugs do you attempt to get look alikes? A. With the majority of the generic medications that we dispense going to nursing homes, the first thing I attempt to find out, if the product has been legally cleared, that it is available legally, that we are not infringing on patents, whatever, etc., etc. The next thing I look for is that we have a look alike.

Q. Have you ever received any promotional materials from Premo Pharmaceutical Laboratories? A. Not to the best of my knowledge.

Defendant's Exhibit 63 (Premo)

Q. I show you what Plaintiff has marked as Exhibit 7 and I think you have testified that one of these prescriptions was filled with Cyclospasmol. A. Yes.

Q. And were the rest filled generically? Is that right? A. Yes, sir.

Q. Can you tell us what the circumstances were such that one [84] was filled with Cyclospasmol and the remainder were filled generically? I handed the witness Exhibit 7. A. Looking at Exhibit 7, do you want me to comment on each one, or —

Q. Yes, if you would, and in fact if you could take a pencil and write "A", "B", "C", "D" on them and — A. Okay, Exhibit 7A, the prescription was written for Cyclospasmol 200 milligrams, dispense one, three times a day. We have so indicated under the prescription No. 410645, the capital "G" designating we used the generic equivalent of Cyclospasmol. The price charged was $3.75 for 50 capsules, which is the generic pricing based on the cost of medication plus we run on a fee system on filling prescriptions. It would be our normal fee plus the price.

Q. Why was that filled with cyclandelate rather than Cyclospasmol — the one you put an "A" on? A. Because we told the patient that we had the generic equivalent available, gave him the pricing on both Cyclospasmol and cyclandelate, and he made the [85] decision as to which product we were to use.

Q. Could you continue and put a "B" on the second one? A. On "B" is a prescription for Cyclospasmol 400 milligrams number 50. The order reads one morning and

Defendant's Exhibit 63 (Premo)

evening, and here again Prescription No. 409849, de
with a capital "G". The same situation took place and
time we charged $4.00 for 50 of the cyclandelate 400 mil
I can comment on this one — due to the copying I
number did not come out clear. I'll put a "C" on this
reference to this. This is one of the patients I have a pr
It's a prescription for Cyclospasmol 400 milligrams, o
times a day. This prescription was filled originally
capsules for $12.75 and the generic became available
called the physician and there is a note down in the cor
dated 9/3/75, "M.D. okays change in RX and to ref
status". At that time when we dispensed the generic we
the price from $12.75 for 120 to $5.45 for 60. The patient
a lesser amount because the doctor [86] changed the dos
original dosage was four times a day.

Q. You're referring to the one that has what l
it? A. Marked "C". Exhibit "D", a prescription was wr
Cyclospasmol 200 milligram, number 100, one tablet fo
a day for circ, which would be an abbreviation for circ
The doctor did specify in his own handwriting "DAW
meant that Ives branded cyclandelate was used. Prescrip
409936. The patent was charged $11.10 for 100 capsules.
E, prescription for Cyclospasmol 200 milligrams num
One capsule four times a day. As previously indica
patient was given the option and the pricing of both an
to take the generic equivalent. The charge was $6.00
capsules.

Q. Thank you. With respect to Exhibit 10, is t
shown to the public — this bottle? A. Per se, no.

Q. And how about Exhibit 11? A. No.

Defendant's Exhibit 63 (Premo)

[87] Q. I show you Plaintiff's Exhibit 17 and I turned to the section which has generic tablets and capsules. Do you see where there is a reference — as an example, let's go to Page 5 for cyclandelate and in caps "Generic for Cyclospasmol". Do you think it's beneficial as a pharmacist that the generic product is referenced to the Cyclospasmol product in that catalogue based on your 27 years of experience? A. Looking at Exhibit 17, Page 5, in reference to the listing of cyclandelate, it reads "cyclandelate capsules, generic for Cyclospasmol". I know that Cyclospasmol is cyclandelate. It might be beneficial for those who don't use generics if they were so inclined to purchase, it would be an easy reference as any book, any catalogue. Sears catalogue has a reference indication and I'm sure this would follow along.

Q. Does a reference such as shown in Exhibit 17 where cyclandelate is referenced to Cyclospasmol suggest to you that if you have a prescription for Cyclospasmol DAW, that it should be filled generically? [88] Q. No. Sir.

Q. In the catalogues that you receive from companies who wish to sell you products, do you generally find that the generic product is referenced to a brand name product? A. Yes — each and every one.

Q. Do you think this is beneficial? A. Saves time if you're going to check a product to see a price, availability, etc.

Q. Do you have any problem in Exhibit 17 figuring out which is the generic product and which is the brand name product? A. No.

Q. I show you Exhibit 18 which Mr. Raubicheck marked before and I notice that there are two columns. It says "Name

Defendant's Exhibit 63 (Premo)

Brand" and "Generic Brand". Do you have any trouble telling which is the name brand product and which is the generic product? A. No.

Q. Now, does Exhibit 18 suggest to you as a pharmacist practicing in the State of Ohio that if you receive [89] a prescription for Cyclospasmol DAW that it ought to be dispensed generically? A. No sir — it should be DAW — dispensed as written.

Q. I show you Exhibit 19 which was marked by Plaintiffs and ask you if you could look through it and do you have any problem looking in that exhibit and figuring out which is the brand name product and which is the generic? A. No, because they are identified at the top. Name brand and then the next column indicates the manufacturer's name and their generic brand.

Q. Does Exhibit 19 suggest to you as a registered pharmacist in the State of Ohio that if you have a prescription for Cyclospasmol DAW that it should be filled generically? A. No, sir.

Q. I show you Exhibit 20 which is the Generix Drug Catalogue. Do you have a problem in looking through that catalogue and figuring out which is the generic and which is the branded product? A. No.

[90] Q. Does that suggest to you that a prescription for Cyclospasmol DAW ought to be filled generically? A. No, sir.

Q. And finally I show you the Michigan Pharmacal catalogue Exhibit 21. Do you have any problem figuring out

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which is the generic and which is the branded products listed? A. No, because it so indicates "Brand Name" in heavy print and in italics it says "generic" in light print.

Q. Does that catalogue suggest to you that a prescription for Cyclospasmol DAW ought to be filled generically? A. No, sir.

Q. Have you ever seen a generic cyclandelate, the 200 milligrams, which isn't blue? A. I never have, no sir.

Q. Have you seen a generic cyclandelate 400 milligrams which isn't blue and red? A. No, sir.

Q. Do the patients who come to your store to have their prescriptions filled show a concern for the price of their products? [91] A. Most definitely.

Q. And in your opinion based on your dealings with these patients is that why a certain percentage of them want generic products? A. Yes sir.

* * *

Q. You stated before that the difference in the generic and the brand name drug is a savings to the consumer? A. Yes.

Q. Okay, as a pharmacist does it take you extra time and effort when you prescribe a generic instead of a brand name? A. When I elect the option provided under the State law to use the pharmacist's selectivity of the product, yes, [92] it does take longer because I have to price both products, I have to engage the customer in conversation and allow them to make the decision. Yes, it does take longer.

Defendant's Exhibit 63 (Premo)

Q. Do you feel the customer's satisfaction is worth the effort? A. Right. As a pharmacist working in one spot for 26 years and having continuously to tell people their prescriptions have gone up, it's a relief to say now, "I can save you three or four dollars on the prescription." I'm not the heavy anymore.

Q. And when you were referring to the catalogues, Plaintiff's Exhibits 17 through 21, you stated that no, the joint listing of generic and brand name does not suggest to you a substitution of one for the other. A. No way whatsoever.

Q. Could you explain why? A. Well, looking at Exhibit 9, the bottle is labeled cyclandelate underneath in half-size print, which is the chemical name of the product so branded by Ives as Cyclospasmol, its branded name. And, as a [93] practicing pharmacist I am aware that all Cyclospasmol is cyclandelate and all cyclandelate is Cyclospasmol.

* * *

GRAND JURY INDICTMENTS JUDICIALLY NOTICED BY COURT OF APPEALS

Grand Jury Indictments

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY

INDICTMENT NUMBER 1056/80

THE PEOPLE OF THE STATE OF NEW YORK

-AGAINST-

MELROSE PHARMACY, INC.

Defendant.

COUNTS

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE	(5 COUNTS)
DEVIATING FROM THE TERMS OF A PRESCRIPTION	(10 COUNTS)
MISBRANDING A DRUG	(2 COUNTS)
ATTEMPTED PETIT LARCENY	(6 COUNTS)

TRUE BILL

s/ Frank Barell
FOREMAN, GRAND JURY

S/ Charles J. HYNES
DEPUTY ATTORNEY GENERAL
STATE OF NEW YORK
270 Broadway
New York, New York 10007

COUNT 1 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Melrose Pharmacy, Inc. a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 19, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false

statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 2 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx on or about January 3, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

Grand Jury Indictments

COUNT 3 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 4, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 4 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST

DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Melrose Pharmacy, Inc. a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 14, 1980 commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendnat, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 5 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of

Bronx, on or about January 21, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 6 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about October 16, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the

defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Pedro Ortiz an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 7 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about October 25, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

Grand Jury Indictments

COUNT 8 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law); committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about November 2, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 9 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc. a domestic corporation organized in the State of New York, did, in the

County of Bronx, on or about December 13, 1979 co
crime of DEVIATING FROM THE TERMS
PRESCRIPTION, to wit: an agent of the defenda
acting within the scope of his employment and in beh
defendant, in the course of putting up a drug and
making up a prescription and filling an order for d
medicine, did deviate from the terms of the prescripti
and demand for ELAVIL by substituting and disp
different article and drug for and in lieu of the article
prescribed, and otherwise deviated from the term
prescription order and demand by substituting one
another, to wit, the defendant dispensed to one Hector
article and drug contrary to the terms of the prescripti
and demand for ELAVIL.

COUNT 10 THE GRAND JURY OF THE COU
BRONX by this indictment, accuse the d
of the crime of DEVIATING FRO
TERMS OF A PRESCRIPTION (in vio
Section 6816 of the Education Law), com
follows:

The defendant, Melrose Pharmacy, Inc., a
corporation organized in the State of New York, di
County of Bronx on or about December 19, 1979 co
crime of DEVIATING FROM THE TERMS
PRESCRIPTION, to wit: an agent of the defenda
acting within the scope of his employment and in beh
defendant, in the course of putting up a drug and
making up a prescription and filling an order for d
medicine, did deviate from the terms of the prescripti
and demand for ELAVIL by substituting and disp
different article and drug for and in lieu of the article

prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 11 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about December 27, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 12 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE

TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 3, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 13 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 4, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while

acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 14 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 14, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio

Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 15 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 21, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 16 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

Grand Jury Indictments

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about November 2, 1979 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container DIURIL when in truth and fact its contents were not DIURIL.

COUNT 17 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6311(10) of the Education Law) committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 14, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

COUNT 18 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about November 2, 1979, with the intent

to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that DIURIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 19 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 19, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

Grand Jury Indictments

COUNT 20 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows;

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 3, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 21 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 4, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to

be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 22 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 14, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit; an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 23 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

Grand Jury Indictments

The defendant, Melrose Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 21, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

INDICTMENT NUMBER
1236/80
153/413B

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

SOEL MELERO,

Defendant.

Grand Jury Indictments

COUNTS

DEVIATING FROM THE TERMS OF A PRESCRIPTION (2 COUNTS)

MISBRANDING A DRUG (2 COUNTS)

TRUE BILL

s/ Laura Barbuzza
FORELADY, GRAND JURY

s/ Charles J. Hynes
CHARLES J. HYNES
DEPUTY ATTORNEY GENERAL
STATE OF NEW YORK
270 Broadway
New York, New York 10007

COUNT 1 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Soel Melero on or about December 7, 1980, in the County of Kings in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article

and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 2 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Soel Melero on or about February 15, 1980, in the County of Kings in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 3 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Soel Melero on or about February 7, 1979, in the County of Kings did misbrand a drug by falsely labeling

its container CYCLOSPASMOL when in truth and in fact the contents were not CYCLOSPASMOL.

COUNT 4 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Soel Melero on or about February 15, 1980, in the County of Kings did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and in fact the contents were not CYCLOSPASMOL.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

INDICTMENT NUMBER

1235/80
153/413A

THE PEOPLE OF THE STATE OF NEW YORK

-against-

PUEBLOS PHARMACY, INC.,

Defendant.

COUNTS

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE	(4 COUNTS)
DEVIATING FROM THE TERMS OF A PRESCRIPTION	(5 COUNTS)
MISBRANDING A DRUG	(2 COUNTS)
ATTEMPTED PETIT LARCENY	(4 COUNTS)

TRUE BILL

s/ Laura Barbuzza
FORELADY, GRAND JURY

s/ Charles J. Hynes
CHARLES J. HYNES
DEPUTY ATTORNEY GENERAL
STATE OF NEW YORK
270 Broadway
New York, New York 10007

COUNT 1 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc. a domestic corporation in the State of New York, did, in the County of

Kings on or about October 25, 1979, commit the OFFERING A FALSE INSTRUMENT FOR FILING FIRST DEGREE, to wit: a high managerial age defendant, while acting within the scope of his employ in behalf of the defendant, knowing that a written instr wit, a New York State Medical Assistance (Title XIX) Pharmacy Claim Form contained false information statements, and with the intent to defraud the Stat York, did offer and present said written instrument t office, to wit, the New York State Department Services, with the knowledge and belief that sai instrument would be filed with, registered, recorde otherwise become a part of the records of said public o New York State Medical Assistance (Title XIX) Pharmacy Claim Form contained false information statements, in that it was claimed thereon that DI dispensed and furnished to Joseph Gomez, whereas, in in fact, as the defendant well knew, a different a dispensed and furnished.

COUNT 2 THE GRAND JURY OF THE COU KINGS by this indictment, accuse the of the crime of OFFERING A INSTRUMENT FOR FILING IN TH DEGREE (in violation of Section 175 Penal Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc. a corporation in the State of New York, did, in the Kings on or about November 21, 1979, commit th OFFERING A FALSE INSTRUMENT FOR FILIN FIRST DEGREE, to wit: a high managerial ag defendant, while acting within the scope of his emplo

in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that DIURIL was dispensed and furnished to Joseph Gomez, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 3 THE GRAND JURY OF THE COUNTY OF KINGS, by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc. a domestic corporation in the State of New York, did, in the County of Kings on or about November 28, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New

York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that DIURIL was dispensed and furnished to Joseph Gomez, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 4 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc. a domestic corporation in the State of New York, did, in the County of Kings on or about February 7, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and

otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Joseph Gomez, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 5 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about October 25, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

Grand Jury Indictments

COUNT 6 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about November 21, 1970 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 7 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

Grand Jury Indictments

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about November 28, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 8 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about February 7, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and

dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 9 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about February15,1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Joseph Gomez an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 10 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of

Grand Jury Indictments

MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Kings on or about February 15, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

COUNT 11 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Kings on or about February 7, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

COUNT 12 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

Grand Jury Indictments

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about November 28, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that DIURIL was dispensed and furnished to Joseph Gomez with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 13 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about February 7, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Joseph Gomez with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

Grand Jury Indictments

COUNT 14 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about November 21, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that DIURIL was dispensed and furnished to Joseph Gomez with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 15 THE GRAND JURY OF THE COUNTY OF KINGS by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, Pueblos Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Kings on or about October 25, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to

be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that DIURIL was dispensed and furnished to Joseph Gomez with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

INDICTMENT NUMBER 1062/80

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

BENJAMIN BERNSTEIN,

Defendant.

COUNTS

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE	(10 COUNTS)
DEVIATING FROM THE TERMS OF A PRESCRIPTION	(16 COUNTS)
MISBRANDING A DRUG	(9 COUNTS)
ATTEMPTED PETIT LARCENY	(10 COUNTS)

TRUE BILL

s/ Frank Burrelli
FOREMAN, GRAND JURY

S/ Charles J. Hynes
CHARLES J. HYNES
DEPUTY ATTORNEY GENERAL
STATE OF NEW YORK
270 Broadway
New York, NY 10007

COUNT 1 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 13, 1979, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

Grand Jury Indictments

COUNT 2 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 19, 1979, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 3 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 20, 1979, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title

XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that KENACORT as dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 4 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 27, 1979, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false

information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 5 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 27, 1979, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that KENACORT was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 6 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST

DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 3, 1980, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 7 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 11, 1980, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written

instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 8 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 14, 1980, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

Grand Jury Indictments

COUNT 9 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 21, 1980, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 10 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 29, 1980, in the County of Bronx knowing that a written instrument, to wit, a New York State Medical Assistance (Title

XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 11 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about October 5, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Pedro Ortiz an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

Grand Jury Indictments

COUNT 12 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about October 12, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Pedro Ortiz an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 13 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about October 25, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the

prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 14 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about November 2, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 15 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 10, 1979, in the County of Bronx in the course of putting up a

drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

COUNT 16 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 13, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 17 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant

of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 19, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 18 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 20, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant

dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

COUNT 19 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 27, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

COUNT 20 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about December 27, 1979, in the County of Bronx in the course of putting up a

drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 21 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 3, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 22 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of

Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 11, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 23 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 14, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

Grand Jury Indictments

COUNT 24 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 17, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 25 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 21, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in

lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 26 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, Benjamin Bernstein, on or about January 29, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 27 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

Grand Jury Indictments

The defendant, Benjamin Bernstein, on or about December 13, 1979, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 28 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about December 19, 1979, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 29 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about December 27, 1979, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 30 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

Grand Jury Indictments

The defendant, Benjamin Bernstein, on or about January 3, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 31 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about January 11, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 32 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about January 14, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and in fact the contents were not CYCLOSPASMOL.

COUNT 33 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

Grand Jury Indictments

The defendant, Benjamin Bernstein, on or about January 17, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container ELAVIL when in truth and in fact the contents were not ELAVIL.

COUNT 34 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about January 21, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and in fact the contents were not CYCLOSPASMOL.

COUNT 35 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, Benjamin Bernstein, on or about January 29, 1980, in the County of Bronx did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and in fact the contents were not CYCLOSPASMOL.

COUNT 36 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

Grand Jury Indictments

The defendant Benjamin Bernstein, on or about December 13, 1979, in the County of Bronx, with intent to commit the crime of Petit Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres, intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

COUNT 37 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant Benjamin Bernstein, on or about December 19, 1979, in the County of Bronx, with intent to commit the crime of Petit Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres, intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

COUNTS 38 THROUGH 45
UNINTELLIGIBLE IN ORIGINAL.

Grand Jury Indictments

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

INDICTMENT NUMBER 1057/80

PEOPLE OF THE STATE OF NEW YORK

-against-

JAMES DETURA

Defendant

COUNTS

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE	(4 COUNTS)
DEVIATING FROM THE TERMS OF A PRESCRIPTION	(4 COUNTS)
ATTEMPTED PETIT LARCENY	(4 COUNTS)

TRUE BILL

s/ Frank Burelli
FOREMAN, GRAND JURY

s/ Charles J. Hynes
CHARLES J. HYNES
DEPUTY ATTORNEY GENERAL
STATE OF NEW YORK
270 Broadway
New York, New York 10007

Grand Jury Indictments

COUNT 1 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, James Detura, on or about December 19, 1979, in the County of Bronx, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 2 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, James Detura, on or about January 3, 1980, in the County of Bronx, knowing that a written

instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 3 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, James Detura, on or about January 4, 1980, in the County of Bronx, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program

Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 4 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, James Detura, on or about January 21,1980, in the County of Bronx, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 5 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE

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TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, James Detura, on or about December 19, 1979, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 6 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, James Detura, on or about January 3, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 7 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, James Detura, on or about January 4, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 8 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, James Detura, on or about January 21, 1980, in the County of Bronx in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of a prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for an in lieu of the article and drug prescribed, and otherwise deviated from the terms of

the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 9 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, James Detura, on or about December 19, 1979 in the County of Bronx, with intent to commit the crime of Petit Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

COUNT 10 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, James Detura, on or about January 3, 1980, in the County of Bronx, with intent to commit the crime of Petit Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to

steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

COUNT 11 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, James Detura, on or about January 4, 1980, in the County of Bronx, with intent to commit the crime of Petit Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

COUNT 12 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, James Detura, on or about January 21, 1980, in the County of Bronx, with intent to commit the crime of Petit

Larceny, engaged in conduct which tended to effect the commission of said crime, in that the defendant did attempt to steal a sum of money from the State of New York by submitting New York State Medical Assistance (Title XIX) Program Pharmacy Claim Forms in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada intending that the New York State Department of Social Services, in reliance thereon, would pay him a sum of money to which he was not entitled.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

INDICTMENT NUMBER 1061/80

THE PEOPLE OF THE STATE OF NEW YORK

-against-

B & B PHARMACY, INC.,

Defendant.

COUNTS

OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE	(10 COUNTS)
DEVIATING FROM THE TERMS OF A PRESCRIPTION	(16 COUNTS)

MISBRANDING A DRUG (9 COUNTS)

ATTEMPTED PETIT LARCENY (11 COUNTS)

A TRUE BILL

s/ Frank Burelli
Foreman, Grand Jury

s/ Charles J. Hynes
Deputy Attorney General
State of New York
270 Broadway
New York, New York 10007

COUNT 1 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 13, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New

York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 2 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 19, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and

otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 3 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 20, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that KENACORT was dispensed and furnished to Emilio Estrada, whereas, in truth

and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 4 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 27, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 5 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant

of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about December 27, 1979, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that KENACORT was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 6 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

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The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 3, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 7 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 11, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE

FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that ELAVIL was dispensed and furnished to Hector Torres, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 8 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 14, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program

Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistnace (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 8 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 21, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social

Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistnace (Title XIX) Program Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 10 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE (in violation of Section 175.35 of the Penal Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation in the State of New York, did, in the County of Bronx, on or about January 29, 1980, commit the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, to wit: a high managerial agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, knowing that a written instrument, to wit, a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form contained false information and false statements, and with the intent to defraud the State of New York, did offer and present said written instrument to a public office, to wit, the New York State Department of Social Services, with the knowledge and belief that said written instrument would be filed with, registered, recorded in and otherwise become a part of the records of said public office. Said New York State Medical Assistnace (Title XIX) Program

Pharmacy Claim Form contained false information and false statements, in that it was claimed thereon that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada, whereas, in truth and in fact, as the defendant well knew, a different article was dispensed and furnished.

COUNT 11 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about October 5, 1979, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Pedro Ortiz an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 12 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE

TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about October 12, 1979, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Pedro Ortiz an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 13 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about October 25, 1979, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while

acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 14 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about November 2, 1979, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for DIURIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres,

an article and drug contrary to the terms of the prescription, order and demand for DIURIL.

COUNT 15 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 10, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

COUNT 16 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

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The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 13, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 17 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as foltows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 19, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order

and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 18 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 20, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

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COUNT 19 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 27, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for KENACORT by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for KENACORT.

COUNT 20 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the

County of Bronx on or about December 27, 1979 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 21 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 3, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug

prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 22 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 11, 1980 commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 23 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE

TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 17, 1980, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 24 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 17, 1980, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while

acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for ELAVIL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Hector Torres an article and drug contrary to the terms of the prescription, order and demand for ELAVIL.

COUNT 25 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 21, 1980, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio

Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 26 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment, accuse the defendant of the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION (in violation of Section 6816 of the Education Law), committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 29, 1980, commit the crime of DEVIATING FROM THE TERMS OF A PRESCRIPTION, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, in the course of putting up a drug and medicine, making up a prescription and filling an order for drugs and medicine, did deviate from the terms of the prescription, order and demand for CYCLOSPASMOL by substituting and dispensing a different article and drug for and in lieu of the article and drug prescribed, and otherwise deviated from the terms of the prescription, order and demand by substituting one drug for another, to wit, the defendant dispensed to one Emilio Estrada an article and drug contrary to the terms of the prescription, order and demand for CYCLOSPASMOL.

COUNT 27 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about December 13, 1979 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 28 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about December 19, 1979 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 29 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 3, 1980 commit the

crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 30 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 11, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 31 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 14, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely

labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

COUNT 32 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 17, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 33 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 21, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

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COUNT 34 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about January 29, 1980 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container CYCLOSPASMOL when in truth and fact its contents were not CYCLOSPASMOL.

COUNT 35 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of MISBRANDING A DRUG (in violation of §6811(10) of the Education Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York did, in the County of Bronx on or about December 27, 1979 commit the crime of MISBRANDING A DRUG, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, did misbrand a drug by falsely labeling its container ELAVIL when in truth and fact its contents were not ELAVIL.

COUNT 36 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in

violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 13, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 37 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 19, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to

Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 38 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 20, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that KENACORT was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 39 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 27, 1979, with the

intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 40 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about December 27, 1979, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that KENACORT was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 41 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant

of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx on or about January 3, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 42 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 11, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and

falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 43 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 14, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 44 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

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The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 17, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that ELAVIL was dispensed and furnished to Hector Torres with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 45 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 21, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.

COUNT 46 THE GRAND JURY OF THE COUNTY OF BRONX by this indictment accuse the defendant of ATTEMPTED PETIT LARCENY (in violation of Sections 110.00 and 155.25 of the Penal Law) committed as follows:

The defendant, B & B Pharmacy, Inc., a domestic corporation organized in the State of New York, did, in the County of Bronx, on or about January 29, 1980, with the intent to commit the crime of PETIT LARCENY, engage in conduct which tended to effect the commission of said crime, to wit: an agent of the defendant, while acting within the scope of his employment and in behalf of the defendant, filed and caused to be filed a New York State Medical Assistance (Title XIX) Program Pharmacy Claim Form in which he knowingly and falsely claimed that CYCLOSPASMOL was dispensed and furnished to Emilio Estrada with the intent that the New York State Department of Social Services, through its authorized fiscal agent, pay a sum of money to the defendant in reliance thereon.